



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

**ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED**

Mr. Steve Obert
President
Cody Metal Finishing, Inc.
1620 N. Throop Street
Chicago, IL 60642
codymetals@sbc.global.net

Re: Notice of Potential Violation and Opportunity to Confer
Notice of Intent to File Civil Administrative Complaint Against Cody Metal Finishing, Inc.
EPA Identification No: ILD984806224
Chicago, Illinois

Dear Mr. Obert:

The EPA plans to file an administrative complaint for civil penalties against Cody Metal Finishing, Inc., ("Cody Metal" or "you"). We will allege that you violated 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 Cody Metal in response to EPA's Information Request, observations made by EPA during a compliance evaluation inspection, and EPA's review of Cody Metal's response to a Notice of Violation dated January 27, 2023, EPA is prepared to allege that Cody Metal unlawfully stored hazardous waste without a permit or interim status as a result of its 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). EPA is prepared to allege, as outlined in item 1 in the enclosed attachment, that Cody Metal did not label tanks as "Hazardous Waste," thus failing to comply with all conditions required for a facility to store hazardous waste without a permit.

Many of the conditions for a RCRA permit exemption 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. Items 2-5 listed in the enclosed attachment are independent TSD requirements incorporated from Ill. Admin. Code tit. 35 Part 725. Accordingly, EPA is prepared to allege that each failure of Cody Metal to comply with these provisions is also a violation of the corresponding requirement in Ill. Admin. Code tit. 35 Part 725.

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

Based on information currently available to us, we plan to propose a penalty of \$140,331 in the complaint. 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 \$140,331 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

Dierich.andrea@epa.gov

If you want to confer with us regarding this Notice, you should contact Andrea Dierich via email, 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 Cody Metal 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 Cody Metal.

If you have any legal questions regarding this Notice, please contact Nora Wells at (312) 353-7626 or wells.nora@epa.gov.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Valerie Davis, Illinois EPA, valerie.a.davis@illinois.gov
Paul Eisenbrandt, Illinois EPA, 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 Inspection, Cody Metal was out of compliance with the following large quantity generator permit exemption condition:

1. Accumulation Time

Under Ill. Admin Code tit. 35 § 722.134(a)(3)(1)¹, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that, while being accumulated on-site, each container and tank is labeled or marked clearly with the words, “Hazardous Waste.”

At the time of the October 2021 inspection, three tanks located in the Outside Storage Area were missing the required labels with the words “Hazardous Waste.”

At the time of the Inspection, Cody Metal was also out of compliance with the following independent TSD requirements:

2. Design and installation of new tank systems or components

- I. Under Ill. Admin Code tit. 35 § 725.292(a), the owner or operator of a new tank system² or components must obtain and submit a written assessment, reviewed, and certified by a qualified Professional Engineer, attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating of hazardous waste.

At the time of the inspection, Cody Metal had a four-tank system. A representative of Cody Metal stated that the facility uses the new fourth tank as a hazardous waste overflow storage from the other three tanks. However, the Facility’s written and certified assessment of its tank system accounted for “...

¹ We note that 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 which contained a provision at Ill. Admin. Code tit. 35 § 722.134 that remains the RCRA authorized Large Quantity Generator provision in Illinois.

² *New tank system* is defined as a tank system that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986. *See*, 35 IAC § 720.110 [40 CFR § 260.10].

three storage units in one area, outside the building.” No additional assessment or certification was provided for the addition of the fourth tank in the system.

- II. Under Ill. Admin Code tit. 35 § 725.292(b) and (g), the owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for weld breaks; punctures; scrapes of protective coatings; cracks; corrosion; and other structural damage or inadequate construction or installation. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use. The owner and operator must obtain and keep at the facility written and certified statements by the installation inspector or qualified Professional Engineer to attest that the tank system was properly designed and installed in accordance with Ill. Admin Code tit. 35 § 725.292(b)-(f) and any repairs pursuant to Ill. Admin Code tit. 35 § 725.292(b)-(d) were performed.

At the time of the inspection, Cody Metal did not have available written and certified statements and documentation from an installation inspector or qualified Professional Engineer to attest that the tanks were properly designed and installed per the design proposal; inspected for weld breaks, punctures, scrapes of protective coatings, cracks, corrosion, and other structural damage or inadequate construction or installation; and any repairs were performed prior to the tank system’s use.

3. Containment and detection of releases

- I. Under Ill. Admin Code tit. 35 § 725.293(b)(1) and (2), secondary containment systems must be designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during use and capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Cody Metal’s secondary containment system was designed such that an alarm would be enunciated inside the building if the level of liquids in the secondary containment system exceeds 1.5 inches. During the inspection, the secondary containment system had approximately 6.5 inches of standing water, which made the detection system incapable of detecting additional releases and accumulated liquids. The secondary containment system also contained debris and an additional tank, so the system would not be able to contain the full capacity of the largest tank in the event of a release. The secondary containment system, then,

was not being operated to prevent overflow of wastes and accumulated liquid out of the system.

- II. Under Ill. Admin Code tit. 35 § 725.293(c)(3), secondary containment systems must, at a minimum, be provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary and secondary containment structure or any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the existing detection technology or site conditions will not allow detection of a release within 24 hours.

Cody Metal's secondary containment system was designed such that an alarm would sound inside the building if the level of liquids in the secondary containment system exceeds 1.5 inches. During the inspection, the secondary containment system had standing water over 1.5 inches, but inspectors did not hear an alarm in the building. The most recent precipitation event had occurred over 24 hours prior to the inspection.

- III. Under Ill. Admin Code tit. 35 § 725.293(c)(4), the secondary containment system must, at a minimum, be sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as possible to prevent harm to human health or the environment if removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

During the inspection, EPA inspectors observed approximately 6.5 inches of standing water within the secondary containment. The most recent precipitation measured approximately 2.8 inches of rain and had occurred about 48 hours prior to the inspection.

- IV. Under Ill. Admin Code tit. 35 § 725.293(e)(1)(A) and (B), external liner systems in secondary containment systems must be designed or operated to contain 100 percent of the capacity of the largest tank within the liner system's boundary and prevent run-on or infiltration of precipitation into the secondary containment system, unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

Cody Metal's secondary containment system was designed and installed to contain a total volume of 2,154 gallons. The largest tank in the system has a volume of 1,700 gallons. During the inspection, EPA inspectors observed that the secondary containment system was over halfway full of standing water, debris, excess materials, and an additional tank was not included in the Facility's written and certified assessment. Cody Metal's operation of the secondary containment

system prevented it from containing 100 percent of the 1,700-gallon tank's capacity.

4. Inspections

Under Ill. Admin Code tit. 35 § 725.295(a), (b) and (g), the owner or operator must inspect and document, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells, etc.) to ensure that the tank system is being operated according to its design. This includes overfill/spill control equipment; above ground portions of the tank system for corrosion or releases, erosion, or signs of releases of hazardous waste; and construction materials and the area immediately surrounding the externally accessible portion of the tank system to detect erosion or signs of releases of hazardous waste.

During the inspection, Cody Metal did not produce documentation of inspections of overfill/spill control equipment; above ground portions of the tank system for corrosion or releases, erosion, or signs of releases of hazardous waste; and construction materials and the area immediately surrounding the externally accessible portion of the tank system to detect erosion or signs of releases of hazardous waste.

5. Personnel Training

Under 35 Ill. Adm. Code § 725.116(d)(4), the owner or operator of the facility must maintain records that document that the facility personnel have completed an annual review of the initial training set forth in 35 Ill. Adm. Code § 725.116(a) and 40 C.F.R § 265.16(a).

During the inspection, a representative of Cody Metal stated the Facility provided all training documentation to EPA in response to the March 2021 information request for documentation dated from 2017 onwards. The Facility response provided no records of annual personnel training for facility personnel, including the emergency response coordinators.