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U.S. EPA REGION 5
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

In the Matter of:)	Docket No. RCRA-05-2025-0012
)	
RathGibson, LLC)	Proceeding to Commence and Conclude
Janesville, Wisconsin,)	an Action to Assess a Civil Penalty
)	Under Section 3008(a) of the Resource
Respondent.)	Conservation and Recovery Act,
)	42 U.S.C. § 6928(a)
<u>EPA ID No.: WID006075634</u>)	

Consent Agreement and Final Order

Preliminary Statement

1. This administrative action is commenced and concluded under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. U.S. EPA provided notice of commencement of this action to the State of Wisconsin pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

4. Respondent is RathGibson, LLC, a limited liability company doing business in the State of Wisconsin.

5. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. §§ 22.13(b).

6. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and

dispose of hazardous waste, pursuant to Sections 3001–3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921–6927, and 6934.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001–3023 of RCRA, 42 U.S.C. §§ 6921–6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program effective January 31, 1986. 51 *Fed. Reg.* 3783 (January 31, 1986). Subsequently, EPA authorized revisions and updates to Wisconsin’s RCRA hazardous waste program on May 23, 1989, effective June 6, 1989 (54 *Fed. Reg.* 22278); on November 22, 1989, effective January 22, 1990 (54 *Fed. Reg.* 48243); on April 24, 1992, effective April 24, 1992 (57 *Fed. Reg.* 15029); on June 2, 1993, effective August 2, 1993 (58 *Fed. Reg.* 31344); on August 5, 1994, effective October 4, 1994 (59 *Fed. Reg.* 39971); on August 5, 1999, effective October 4, 1999 (64 *Fed. Reg.* 42630); on June 26, 2002, effective June 26, 2002 (67 *Fed. Reg.* 43027); on April 15, 2009, effective on the same date (74 *Fed. Reg.* 17423), and on April 17, 2009, effective on the same date (74 *Fed. Reg.* 17785).

15. The EPA-authorized Wisconsin hazardous waste regulations are codified in State regulations at Wisconsin Administrative Code (WAC) chs. NR 600–690 (July 2017 version).

See 40 C.F.R § 272.2501(c)(4).

16. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation of RCRA, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$121,275 per day for each violation of Subtitle C of RCRA when the violation occurred after November 2, 2015, and the penalties are assessed after December 27, 2023, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. RathGibson is a stainless and specialty alloy tubing manufacturer with a facility located at 2505 Foster Avenue, Janesville, Wisconsin 53545 (Facility).

18. Respondent is a “person” as defined by WAC s. NR 660.10(90) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

19. Respondent is an “owner” or “operator,” as those terms are defined under WAC ss. NR 660.10(87) and 660.10(88), of the Facility.

20. At all times relevant to this CAFO, Respondent’s Facility consisted of land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste.

21. Respondent’s Facility is a “facility” as that term is defined under WAC s. NR 660.10(43).

22. On December 13, 2022, U.S. EPA conducted a RCRA Compliance Evaluation Inspection at Respondent's Facility ("the inspection").

23. At all times relevant to this CAFO, RathGibson conducted milling and polishing operations on stainless steel. These operations generate, among other things, dust and used air and baghouse filters.

24. This dust was identified by Respondent as exhibiting the D007 hazardous waste characteristic for chromium content.

25. Respondent was conducting a hazardous waste determination for the filters at the time of the inspection and was not managing the filters as hazardous waste at that time. Respondent has, since the inspection, identified the filters as exhibiting the D007 hazardous waste characteristic for chromium content.

26. At all times relevant to this CAFO, RathGibson conducted electropolishing of stainless-steel tubing. This operation generated spent pickle liquor (also known as "electropolishing acid") and related electropolishing acid-contaminated absorbents (collectively "spent electropolishing acid and contaminated absorbents"), as well as wastewater treatment-related wastes including, but not limited to, sludge and used filter socks.

27. The spent electropolishing acid and contaminated absorbents were each identified by Respondent at the time of the inspection as exhibiting the D002 and D007 hazardous waste characteristics for corrosivity and chromium content, respectively.

28. Wastewater treatment sludge was identified by Respondent at the time of the inspection as listed for F006 as well as exhibiting the D007 hazardous waste characteristic for chromium content.

29. A waste determination for the used filter socks had not been made at the time of the inspection.

30. Respondent has, since the inspection, identified the electropolishing acid and electropolishing acid-contaminated absorbents as meeting the listing description for K062 in addition to exhibiting the characteristics for D002 and D007.

31. Respondent has, since the inspection, identified the used filter socks as meeting the listing description for F006 and exhibiting the characteristic for D007.

32. At all times relevant to this CAFO, other relevant wastes generated at the Facility include: (1) acid-bearing absorbents from an onsite Quality Lab, which were identified by Respondent as exhibiting the D007 (chromium content) and D008 (lead content) hazardous waste characteristics; and (2) waste lamps and batteries.

33. Respondent managed waste lamps and batteries as "universal waste," which is defined at WAC s. NR 660.10 (133) and regulated under WAC ch. NR 673.

34. At all times relevant to this CAFO, Respondent stored the wastes that it had identified as hazardous in "containers" as that term is defined under WAC s. NR 660.10(14). Although a waste determination had not yet been made at the time of inspection for the filter socks, Respondent stored them in containers.

35. At all times relevant to this CAFO, the milling dusts, filters, spent electropolishing acid and contaminated absorbents, wastewater treatment sludge, and Quality Lab waste acids

were “solid wastes” as that term is defined under WAC s. NR 661.02, and “hazardous wastes” as that term is defined under WAC s. NR 661.03.

36. At all times relevant to this CAFO, Respondent’s holding of the milling dusts, filters, spent electropolishing acid and contaminated absorbents, wastewater treatment sludge, and Quality Lab waste acids constituted hazardous waste “storage” as that term is defined under WAC s. NR 660.10(112).

37. Respondent is a “generator” as that term is defined in WAC s. NR 660.10(50).

38. Respondent was generating and managing hazardous waste at its Facility on or before November 19, 1980.

39. At all times relevant to this CAFO, and except as otherwise indicated in this CAFO, RathGibson generated greater than 1,000 kilograms (2,205 pounds) of hazardous waste in any month. Therefore, Respondent was a “Large Quantity Generator” of hazardous waste, as defined under WAC s. NR 660.10(70m).

40. On July 5, 2023, U.S. EPA issued a Notice of Potential Violation and Opportunity to Confer (“Notice”) to Respondent, alleging certain violations of RCRA discovered during the inspection.

41. On October 31, 2023, Respondent submitted to U.S. EPA a written response (“Notice Response”) to the Notice.

42. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a), and the regulations at WAC ch. 670, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA License is prohibited.

43. At all times relevant to this CAFO, the State of Wisconsin had not issued a RCRA License to Respondent to treat, store, or dispose of hazardous waste at its Facility.

44. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facility.

45. Pursuant to WAC s. NR 665.0001(3)(g), the requirements of WAC ch. 665 do not apply to a generator accumulating waste onsite in compliance with WAC ss. NR 662.034, except to the extent the requirements are incorporated from WAC ch. 665 in WAC s. NR 662.034.

46. A generator who fails to comply with a generator condition for an exemption from obtaining a RCRA License which does not incorporate a requirement from WAC ch. 665, is in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

47. A generator who fails to comply with a generator condition for an exemption from obtaining a RCRA License that incorporates a requirement from WAC ch. 665 is in violation of the requirement from WAC ch. 665 and of Section 3005(a) of RCRA, 42, U.S.C. § 6925(a).

48. All other applicable RCRA regulations outside of WAC s. NR 662.034 are independently violable requirements.

Count 1: Failure to Make Waste Determinations

49. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

50. Under WAC s. NR 662.011, a person who generates a solid waste must, among other things, determine if that waste is hazardous.

51. At the time of the inspection, Respondent was storing several containers of air and baghouse filters with labels stating, "Pending Analysis."

52. At the time of the inspection, Respondent had not made a waste determination for the used air and baghouse filters.

53. In its Notice Response, Respondent identified the used air and baghouse filters as hazardous waste exhibiting the D007 characteristic for chromium content.

54. At the time of the inspection, Respondent was storing one 55-gallon container of used filter socks near the wastewater treatment system.

55. At the time of the inspection, Respondent had not made a waste determination for the used filter socks.

56. In its Notice Response, Respondent identified the used filter socks as meeting the listing description for F006 and as exhibiting the D007 characteristic for chromium content.

57. Respondent's failures to make waste determinations for the used air and baghouse filters and used filter socks are violations of WAC s. NR 662.011.

Count 2: Failure to Make Complete Hazardous Waste Determinations

58. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

59. Under WAC s. NR 662.011(2) and (3), a generator must determine if solid waste meets a hazardous waste listing description or if solid waste exhibits a hazardous waste characteristic.

60. At the time of the inspection, Respondent was managing spent electropolishing acid and electropolishing acid contaminated absorbents only as hazardous wastes that exhibited the characteristics of D002 for corrosivity and D007 for chromium content.

61. In its Notice Response, Respondent identified the spent electropolishing acid and electropolishing acid contaminated absorbents as also meeting the listing description for K062.

62. At the time of the inspection, Respondent was managing Quality Lab acids with absorbents as exhibiting only the characteristics for D007 and D008 for chromium and lead content.

63. In its Notice Response, Respondent identified D002 for corrosivity as being applicable to the Quality Lab acid with absorbents.

64. Respondent's failures to accurately complete hazardous waste determinations for three waste streams—specifically electropolishing acid, electropolishing acid contaminated absorbents, and Quality Lab acids with absorbents—are violations of WAC NR s. 662.011(2) and (3).

Count 3: Failure to Visibly and Accurately Mark Start Date of Accumulation on Containers

65. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

66. Under WAC s. NR 662.034(1)(b), a generator must mark visibly for inspection on each container holding hazardous waste the date upon which the period of accumulation begins.

67. At the time of the inspection, containers of hazardous waste were stored in a central accumulation area (CAA). Four pallets of containers were double stacked. The markings

for the start dates of accumulation were on the tops of the drums and thus were not visible for inspection.

68. Also, at the time of the inspection, seventeen 55-gallon drums of hazardous waste were marked with a date of July 13, 2022, on mass-printed, pre-completed labels—which, according to the Respondent, did not accurately represent the start date of accumulation.

69. Respondent's failure to mark visibly for inspection containers of hazardous waste with the start dates of accumulation is a violation of WAC s. NR 662.034(1)(b).

Count 4: Storage of Hazardous Waste for More Than 90 Days

70. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

71. Under WAC s. NR 662.034(2), a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of WAC chs. NR 664 and 665 as well as the licensing requirements of WAC ch. NR 670 unless the generator has been granted an extension to the 90-day period.

72. Respondent generates the following hazardous wastes and stores them in 55-gallon containers: wastewater treatment sludge, Quality Lab waste acids, and milling dust. Respondent generates these wastes in small amounts continuously while the Facility is operating, as opposed to large amounts that happen in concentrated moments.

73. The chart below details the amount of time between shipments for the wastewater treatment sludge, Quality Lab waste acids, and milling dust:

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

74. The gaps in shipping of the wastewater treatment sludge, Quality Lab waste acids, and milling dust indicate that each of these hazardous wastes was stored at some point for greater than 90 days at the Facility because Respondent was continuously generating these wastes but was not shipping them every 90 days or less.

75. Respondent did not request an extension for storage beyond 90 days for the wastes identified in the table above.

76. Respondent's failures to obtain extensions to store at the Facility for greater than 90 days wastewater treatment sludge, Quality Lab acids, and milling dust are violations of WAC s. NR 662.034(2).

Count 5: Failure to Mark Satellite Accumulation Containers

77. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

78. Under WAC s. NR 662.034(3)(a)(2), a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or without complying with WAC s. NR 662.034(1) provided that the generator mark these satellite accumulation containers with the words "Hazardous Waste" or with other words identifying the contents of the container.

79. At the time of the inspection, the following satellite accumulation containers contained hazardous waste and were not labeled with the words "Hazardous Waste" or with other words identifying the contents of the container:

- a. One 55-gallon drum in the maintenance/oil storage room in Building 1 that was accumulating floor sweepings (D007);
- b. One 55-gallon drum that had been removed from service collecting milling dust and was moved to the maintenance/oil storage room in Building 1 during the inspection in order to be labeled and marked for storage in the CAA;
- c. Approximately fourteen 55-gallon drums collecting milling dust from individual baghouses in Building 1;
- d. An approximately 55-gallon hopper of wastewater treatment sludge located in the wastewater treatment area of Building 3; and
- e. A 55-gallon drum of wastewater treatment sludge in the wastewater treatment area of Building 3.

80. Respondent's failure to mark numerous satellite accumulation containers, described above, with the words "Hazardous Waste" or with other words identifying the contents of the containers is a violation of WAC s. NR 662.034(3)(a)2.

Count 6: Failure to Train Personnel

81. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

82. Under WAC ss. NR 662.034(1)(d) and 665.0016(1) and (2), a generator 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 to ensure compliance with RCRA. This training must be provided within six months of employment and annually thereafter.

83. At the time of the inspection, Respondent had not provided relevant training to three employees who were listed as emergency coordinators in the Facility contingency plan.

84. Respondent's failure to provide relevant training to three employees are violations of WAC s. NR 665.0016(1) and (2).

Count 7: Failure to Maintain Facility to Prevent Unplanned Releases

85. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

86. Under WAC ss. 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 the air, soil, or surface water which could threaten human health or the environment.

87. At the time of the inspection, the floor of the electropolishing wastewater treatment system was coated in green dust, particles, and chunks from the wastewater treatment sludge.

88. Respondent's failure to properly maintain the area around the electropolishing wastewater treatment system is a violation of WAC s. NR 665.0031 and Section 3005 of RCRA, 42, U.S.C. § 6925(a).

Count 8: Failure to Close Three Satellite Accumulation Containers

89. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

90. Under WAC ss. NR 662.034(3)(a)(1) and 665.0173(1), a generator must keep satellite accumulation containers of hazardous waste closed during storage, except when it is necessary to add or to remove waste.

91. At the time of the inspection, the following containers containing hazardous waste were open when waste was neither being added nor removed from the container:

- a. One 55-gallon container of floor sweepings (containing milling dust) in the maintenance/oil storage room;
- b. One container (hopper) of wastewater treatment sludge in the wastewater treatment area; and
- c. One 55-gallon container of wastewater treatment sludge in the wastewater treatment area.

92. Respondent's failure to keep various satellite accumulation containers closed during storage is a violation of WAC s. NR 665.0173(1) and Section 3005 of RCRA, 42 U.S.C. § 6925(a).

Count 9: Failure to Properly Manage Universal Waste

93. Complainant incorporates paragraphs 1 through 48 of this CAFO as though set forth in this paragraph.

94. WAC s. NR 660.10(134)(a)(1) provides that a generator of universal waste is a "universal waste handler."

95. WAC s. NR 673.09(9) provides that the term "small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms (11,025 pounds) or more total of universal waste (batteries, pesticides, mercury-containing equipment, or lamps—calculated collectively) at any time.

96. At all times relevant to this CAFO, Respondent was a small quantity handler of universal waste within the meaning of WAC s. NR 673.09(9).

97. WAC s. NR 673.13(4)(a) requires that a small quantity handler of universal waste lamps must 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.

98. At the time of the inspection, Respondent did not containerize four individual lamps.

99. At the time of the inspection, Respondent failed to close one container of eight-foot lamps.

100. WAC s. NR 673.14(1) requires that a small quantity handler of universal waste batteries must label or clearly mark each battery or a container or package in which such batteries are contained with any one of the following phrases: "Universal Waste-Batteries," "Waste Batteries," or "Used Batteries."

101. At the time of the inspection, one plastic tote of used batteries was labeled as "Batteries."

102. WAC s. NR 673.14(5) requires that a small quantity handler of universal waste lamps must 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."

103. At the time of the inspection, the following items were not marked with any one of the phrases "Universal Waste-Lamps," "Waste Lamps," or "Used Lamps":

- a. five unlabeled boxes of 4-foot used lamps;
- b. four unlabeled individual used lamps; and
- c. one plastic tote of lamps labeled as "Bulbs."

104. WAC s. NR 673.15(1) and (2) provide that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated unless the generator 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.

105. Respondent did not provide evidence that the company was storing the lamps solely for the purpose of facilitating recovery, treatment, or disposal.

106. Respondent's failure to comply with the requirements for small quantity handlers of universal waste constitutes violations of WAC ss. NR 673.13(4), 673.14(1) and (5), and 673.15(1) and (2).

Civil Penalty

107. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$150,356. In determining the penalty amount, Complainant considered the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

108. Respondent agrees to pay a civil penalty in the amount of \$150,356 ("Assessed Penalty") within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

109. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions, see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

110. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, RCRA-05-2025-0012,

- b. Concurrently with any payment or within 24 hours of any payment,

Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5hearingclerk@epa.gov

Brenda Whitney
Land Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region
whitney.brenda@epa.gov and
R5LEcab@epa.gov

Jacob Podell
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Podell.jacob@epa.gov

U.S. Environmental Protection Agency Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

111. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue

until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed a charge monthly to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the filing date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

112. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service (“IRS”) for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent’s licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

113. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

114. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

115. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN.

- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA's Cincinnati Finance Center at wise.milton@epa.gov, within thirty (30) days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN via email within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

116. The parties consent to service of this CAFO by e-mail at the following valid email address: Podell.jacob@epa.gov (for Complainant), and WClifton01@specialmetals.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

117. Respondent's full payment of the penalty and compliance with this CAFO resolve only Respondent's liability under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for federal civil penalties for the violations alleged in this CAFO.

118. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

119. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, and local laws or permits.

120. Respondent certifies that the Facility is complying fully with RCRA, 42 U.S.C. §§ 6901–6992k, and the regulations at WAC chs. NR 660–679.

121. This CAFO is a “final order” for purposes of 40 C.F.R. § 22.31, U.S. EPA’s RCRA Civil Penalty Policy, and U.S. EPA’s Hazardous Waste Civil Enforcement Response Policy (December 2003).

122. The terms of this CAFO bind Respondent, its successors, and its assigns.

123. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

124. Each party agrees to bear its own costs and attorney’s fees in this action.

125. This CAFO constitutes the entire agreement between the parties.

For RathGibson, LLC, Respondent

12/4/2024

Date

Wesley H. Clifton

Wes Clifton

Environmental Health & Safety Director
Special Metals Corporation

United States Environmental Protection Agency, Complainant

Date

Michael D. Harris

Division Director
Enforcement and Compliance Assurance
Division

In the Matter of: RathGibson, LLC
Docket No.: RCRA-05-2025-0012

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5