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May 13, 2020

Jonathan Lamb, Senior Environmental Quality Analyst
Environment, Great Lakes, and Energy (EGLE)
Air Quality Division (AQD)
3058 W. Grand Boulevard
Suite 2-300
Detroit, MI 48202-6058

RE: EQ Detroit, Inc. (DBA US Ecology - Detroit South) - Response to Violation Notice dated April 22, 2020 for Alleged Nuisance Odors on March 20, 2020

Dear Mr. Lamb:

Please accept this letter as US Ecology - Detroit South's (USE-DS) response to the Violation Notice (VN) dated April 22, 2020, regarding odors allegedly caused by USE-DS's operations in violation of PTI No. 269-04H; General Condition 6 and R336.1901(b) on March 20, 2020. The letter stated that inspections conducted by EGLE-AQD in response to a complaint reportedly found a moderate to strong (level 3 and 4), persistent lime dust and chemical-type odor attributable to USE-DS's operations, impacting areas downwind of the facility.

Purpose

This VN response is intended to help facilitate upcoming discussions of the facility's operations in a joint meeting with EGLE's AQD and MMD personnel. USE-DS hopes to gain a better understanding of how AQD intends to apply Rule 901(b), how USE-DS personnel can coordinate with AQD field personnel to better understand its real-world application of the Odor Intensity Scale as well as the other elements of a 901(b) assessment and, ultimately, what additional reasonable steps USE-DS can take to address AQD's concerns and further our company's commitment to being a responsible corporate citizen and a good neighbor.

Rule 901 (a) vs. (b)

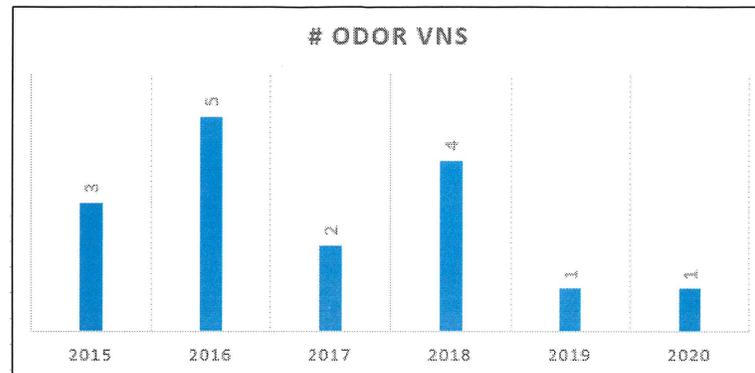
The Violation Notice at issue here is based upon an alleged violation of the prohibition contained in Rule 901(b) which addresses the "unreasonable interference with the comfortable enjoyment of life and property." This standard is based on Michigan's common law action alleging a private nuisance that is unreasonably impacting a

particular individual's use and enjoyment of his/her property. This private nuisance standard is based on an individual's property rights in contrast to its public nuisance counterpart, which is based upon an unreasonable interference with the rights of the general public, such as when AQD issued 18 separate Violation Notices in the span of 24 months to the DRP facility for emissions of noxious odors that almost constantly engulfed miles of the surrounding city. USE-DS believes the difference between the 901(a) public nuisance claim and the 901(b) private nuisance claim at issue here is an important distinction for consideration when analyzing both the facility's administrative record as well as the methodology being used by AQD to establish what it believes constitutes an unreasonable interference with a particular property owner's use and enjoyment of their property. It is worth noting that AQD's own guidance with respect to alleged Rule 901(b) violations states that a violation of the rule cannot be established unless the intensity, frequency and duration of odors rises to the level of an unreasonable interference.

Administrative Background

USE-DS has continued to request odor complaint information from EGLE via the Freedom of Information Act (FOIA) process for our own internal evaluation. The data collected thus far begins in August of 2014. Based on the data collected there are several things to note:

- Prior to March 2019 USE-DS was identified as an odor contributor in compliant investigation reports which originated based on complaints specifically identifying the Detroit Renewable Power facility located next to the USE-DS facility. The almost reflex inclusion of USE-DS in the investigation report narrative for a large number of DRP complaints elevated the number of complaints that appear in the administrative record even though the complaints neither originated nor were independently attributable to the USE-DS location.
- Prior to January 2020 the data contained addresses which demonstrated 42% of the complaints were from one address. Of the 49 complaints from this address through December 2019 only 3 of the complaints resulted in a violation notice.
- The total number of violation notices have gone down since 2014. This recent violation notice is only the second odor VN that USE-DS has received since September of 2018. Therefore, two VNs have been issued in the past year and a half. Prior to September of 2018 there were a total of four VNs in less than a year. As noted in the graph below, VNs overall have declined by 80% since 2016. This recent administrative record does not seem to support the allegation that the USE-DS facility is causing odors of sufficient **intensity, frequency and duration** to be interfering with the use and enjoyment of a reasonable person's property rights.



Current Zoning

USE-DS is located in an area of the city zoned for industrial activity and it would not be unreasonable to expect that an industrial zone may from time-to-time generate odors, noises, or traffic volumes in excess of what would be expected in a residential area, but that does not mean that such activities are unreasonable, but rather a part of the reason why cities choose to concentrate such activities in these zones.

Odor Survey

In the wake of the four VNs in 2018, USE-DS hired a consultant (RWDI Consulting Engineers out of Winsor, ON) to conduct an odor survey to help inform the company's assessment of odors that may be associated with its operations. USE-DS invested a total of \$39,000 to contract RWDI to complete the odor survey in October of 2018 and the results of the odor survey were submitted to EGLE's attention on May 29, 2019.

The survey consisted of pulling samples from the stacks at the Chemfix building and the Chempre scrubber exhaust. The samples were sent for review by a panel of odor experts to determine the odor levels. The odor levels were entered into a computer system to create a dispersion model which depicted where the odors drift, due to stack height and other criteria. The odor levels were then compared with the Illinois standard of 8 odor units as a benchmark.

The results found 99.4% of the time the odor levels were below the Illinois limit of 8 odor units at the theoretically worst-impacted receptor based on the modeling. Again, these results do not support the narrative that USE-DS is causing odors of sufficient intensity, frequency, and duration to be interfering with the use and enjoyment of a reasonable person's property rights.

Odor Investigations by EGLE

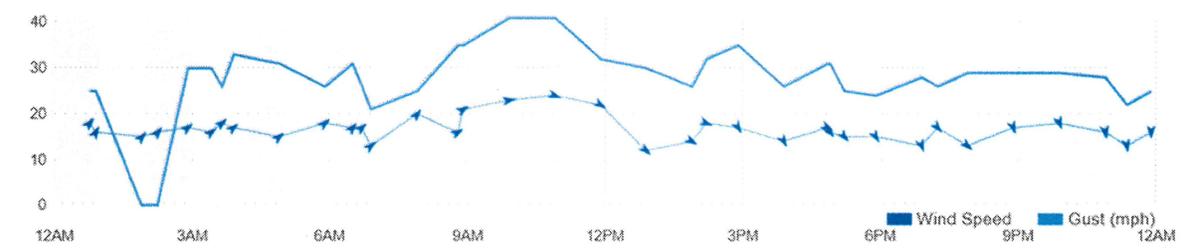
The results of the odor survey discussed above found that 99.4% of the time the odor levels were below the Illinois limit of 8 odor units at the worst-impacted receptor. This leads USE-DS to ask what constitutes an odor event that would be considered

“unreasonable” and what is the likelihood that any odors experienced as a result of its operations would be of sufficient intensity, duration and frequency to support escalating enforcement activity by AQD. It is our understanding that AQD has created an Odor Intensity Scale for the evaluation of alleged Rule 901 violations in which a Level 3 odor is defined as a “distinct and definite objectionable odor” and a Level 4 odor is an “odor strong enough to cause a person to attempt to avoid it completely.” However, according to the firm used by the state to train its staff, RK & Associates, Inc., the training does not include any discussion of this 0-5 Odor Intensity Scale or how to this approach could be used to normalize the evaluation of odor intensity.

Current VN

In response to the March 20, 2020 odor VN, USE-DS also completed a review of the day in question and found that applicable equipment was functioning properly. An odor drive of the neighborhood was completed immediately following a call from EGLE by USE-DS's General Manager and the Chemfix Operations Manager. They identified the lime odors noted as the basis of the VN intermittently in the parking lot of the facility but could not detect the odors in the neighborhood of the complainant identified by EGLE.

Additionally, the weather on March 20, 2020 was not conducive to lingering odors which would have caused “*unreasonable interference with the comfortable enjoyment of life and property*”. The chart below is from Weather Underground on the date in question. As shown, the wind gusts on March 20, 2020 were significant and variable. However, the AQD Complaint Investigation Activity Report concludes that odor intensity was quantifiable under these conditions and were “of sufficient duration and intensity” (no discussion of the frequency element of a 901(b) violation) during the thirty-five minutes it took to complete the investigation that a violation of Rule 901 had been conclusively established.



Actions Taken by USE-DS

Note that the reduction of violations experience over the past few years is consistent with the actions taken by USE-DS to reduce odors from the facility. The actions taken are outlined below:

- USE-DS has been diligent in removing any truly odorous materials (ammonia, amines, etc.) from the process. These waste streams are no longer treated on

site. The approvals have been changed to 'not acceptable on site for treatment' or 'transshipment to another facility'.

- Screening of samples for odors is an ongoing daily process at the site. If operations or laboratory personnel determine the sample of a waste stream is too odorous, the waste stream will not be accepted onsite for treatment. Consequently, the waste will be rejected back to the customer or transshipped to another location.
- The weather conditions are also considered and the wind direction is reviewed on a daily basis as part of operation's odor evaluation. The direction of the wind is obviously indicative of where the odors may travel and the potential receptors downwind of the site. When the humidity is higher, it traps the odor and causes it to travel farther and linger longer. Operations personnel use this information to determine if certain processing should be delayed due to the potential for an odor complaint.
- USE-DS has an on-site initiative to encourage personnel to "say something if they smell something." This initiative has led to earlier investigation of odors and efforts to remedy the odors before they contribute to any offsite impact.

As you can see the facility has been and continues to be proactively working to minimize the potential for undesirable odors resulting from its operations. USE-DS takes odor management very seriously and remains dedicated to its efforts to prevent unreasonable odors by scrutinizing waste profiles prior to approval, proactively monitoring odors offsite, and continuing routine preventative maintenance. The facility is also diligent in community outreach and encourages citizens to call and even take tours of the facility in order to understand the company and its goal to be a good community partner.

Conclusion

Due to the facts, circumstances and considerations outlined above, USE-DS respectfully requests AQD agree to rescind the Violation Notice resulting from the event of March 20, 2020. Given the trends demonstrated over the past two years, USE-DS believes it has successfully demonstrated good faith efforts to respond to AQD's concerns and while continued communication regarding this issue is certainly appropriate the company does not believe the administrative record supports escalation of enforcement on the basis of Rule 901(b).

USE-DS appreciates EGLE's notifying the facility of potential issues and following-up with investigations. In order to enable USE-DS to respond most effectively to odor concerns, we ask that AQD field personnel make every effort to notify John C. Barta, General Manager, as soon as possible with all essential details when any odor complaint potentially relating to USE-DS is received. This will allow USE-DS to immediately investigate and potentially respond to the complaint and report the results.

If you have questions concerning this response, please feel free to contact me at (313) 347-1300.

Sincerely,



John C. Barta
General Manager

cc (via email):

Paul Max, City of Detroit, BSEED
Rich Conforti, EGLE
Todd Zynda, EGLE
Mary Ann Dolehanty, EGLE
Eduardo Olaguer, EGLE
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