

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

August 30, 2022

REC'D - 30th CIRCUIT COURT

SEP 02 2022

BY: _____
Deputy Clerk

Clerk of the Court
Ingham County Circuit Court
County Courthouse, 3rd Floor
315 South Jefferson St.
Mason, MI 48854

Re: *Michigan Department of Environment, Great Lakes, and Energy v
Fricia Enterprises, Inc. d/b/a Industrial Metal Coating Company*
Ingham County Circuit Court File No. 21-000095-CE

Dear Clerk:

Enclosed please find a Consent Judgment for Judge Stokes' signature and entry. We have enclosed an envelope for return of copies to this office.

Thank you for your assistance. Should you have any questions or concerns, please feel free to contact our office at the number provided below.

Sincerely,

/s/ Jennifer Rosa

Jennifer Rosa
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
(517) 335-7664

JR:jg
Enclosures
c/w/encl: Robert C. Davis (*via email*)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES,
AND ENERGY,

No. 2021-95-CE

Plaintiff,

HON. WANDA M. STOKES

v

FRICIA ENTERPRISES, INC. d/b/a
INDUSTRIAL METAL COATING
COMPANY,

Defendant.

Jennifer Rosa (P58226)
Assistant Attorney General
Attorney for Plaintiff
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
rosaj4@michigan.gov

Robert Charles Davis (P40155)
Attorney for Defendant
10 S. Main Street, Ste. 401
Mt. Clemens, MI 48043
(586) 469-4300
rdavis@dbsattorneys.com

CONSENT JUDGMENT

The Plaintiff in this case is the Michigan Department of Environment, Great Lakes, and Energy (EGLE). The Defendant is Fricia Enterprises, Inc., doing business as Industrial Metal Coating Company (IMC), a Michigan corporation located at 6070 Eighteen Mile Road, Sterling Heights, Michigan.

In the Complaint, EGLE alleges that IMC has violated Rule 901 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1901, by emitting

odors that cause an unreasonable interference with the comfortable enjoyment of life and property and create a public nuisance by emitting unreasonable odors from their property. The Complaint also alleges that IMC has violated the following:

- (A) Mich Admin Code, R 336.1201 when it failed to obtain a permit to install for its burn-off oven; and
- (B) Special conditions of its permit PTI No. 25-16 when it failed to keep various records for its ovens and failed to discharge exhaust gases from the stacks for the burn-off ovens unobstructed vertically upwards to the ambient air.

EGLE and IMC (the Parties) agree that settling this action is in the public interest. The Parties consent to entry of this Consent Judgment (Judgment), without further litigation, as the most appropriate means of resolving the allegations and defenses in the pleadings. As evidenced by the signatures below, the Parties agree to, and shall be bound by, the terms and conditions of this Judgment.

IMC neither admits nor denies liability with respect to any issue raised in the Complaint. IMC does not admit any factual allegations or legal conclusions stated or implied in the Complaint or this Judgment.

NOW THEREFORE, before taking any testimony and without trial of any issue of fact or law, and upon consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action pursuant to Sections 5530 of the Michigan Natural Resources and Environmental Protection Act (NREPA), MCL 324.5530, and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. This Court has personal jurisdiction over IMC pursuant to Section 711 of the RJA, MCL 600.711.

1.2 Venue in this Court is proper pursuant to Section 5530(5) of the NREPA, MCL 324.5530(5).

1.3 The Court has determined that the terms and conditions of this Judgment are reasonable, adequately resolve the environmental issues raised herein, and properly protect the interests of the people of the State of Michigan and the rights of IMC. The Court further concludes that after filing the Satisfaction of Judgment detailed in Section XVI, this Judgment resolves the current violations alleged in the complaint through the Effective Date with prejudice.

II. APPLICATION

2.1 The provisions of this Judgment shall be binding on the Parties to this action, their officers, agents, employees, successors, and assigns. No change or changes in the ownership or corporate status or other legal status of IMC, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter IMC's responsibilities under this Judgment.

2.2 The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent.

2.3 In the event IMC sells or transfers the Facility during the term of five (5) years of this Judgment, IMC shall advise any purchaser or transferee of the existence of this Judgment in connection with such sale or transfer. IMC shall also notify EGLE in writing within ten (10) Calendar Days after such sale or transfer, provide the identity and address of any purchaser or transferee, and confirm the fact that notice of this Judgment has been given to the purchaser or transferee. The purchaser and/or transferee of this Judgment must agree, in writing, to assume all the pending and continuing obligations of this Judgment. A copy of that agreement shall be forwarded to EGLE within thirty (30) Calendar Days of assuming the obligations of this Judgment.

III. STATEMENT OF PURPOSE

3.1 In entering this Judgment, the Parties' mutual intent is to settle the violations alleged in the complaint through the Effective Date and ameliorate any nuisance odors in a manner and under terms satisfactory to the Parties.

IV. DEFINITIONS

4.1 Whenever the terms set forth below are used in this Judgment, including attached exhibits, the following definitions shall apply:

- a. "Applicable Law" means any and all state and federal statutes, rules, regulations, or administrative order applicable to IMC and its operations.
- b. "AQD" means the Air Quality Division for the Michigan Department of Environment, Great Lakes, and Energy.

- c. "Business Days" mean Monday through Friday and shall exclude any State of Michigan recognized holiday.
- d. "Calendar Days" means consecutive days as recognized by a current calendar for the year at issue.
- e. "Effective Date" means the date of entry of this Judgment by the Court as recorded on the Court docket or, if the Court instead issues an order approving this Judgment, the date such order is recorded on the Court docket, whichever occurs first.
- f. "EGLE" means the Michigan Department of Environment, Great Lakes, and Energy.
- g. "Established Rule 901 violation" means a Rule 901 violation that EGLE verifies independently, or a complaint by a third party about a nuisance odor that is verified independently by EGLE staff and determined to be a violation of applicable state law.
- h. "Facility" means the building owned by IMC located at 6070 Eighteen Mile Road, Sterling Heights, Michigan.
- i. "IMC" means the Defendant Fricia Enterprises, doing business as Industrial Metal Coating Company.
- j. "Paragraph" means a portion of this Judgment identified by an Arabic number.

- k. "Part 55 of the NREPA" means Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, MCL 324.5501 *et seq.*
- l. "Parties" means the Michigan Department of Environment, Great Lakes, and Energy and Industrial Metal Coating Company.
- m. "Rule 901" means Rule 901(b) of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1901.
- n. "Section" means a portion of this Judgment identified by a Roman numeral.

V. COMPLIANCE REQUIREMENTS

5.1 IMC shall comply with all terms and conditions included in its Permit to Install, PTI No. 106-94 and PTI No. 25-16, including any written and issued revisions or amendments. PTI No. 106-94 is attached as Exhibit A and PTI No. 25-16 is attached as Exhibit B and the permits are hereby incorporated by reference as enforceable parts of this Judgment. Each permit is deemed to be controlling and authorized by EGLE.

5.2 Within thirty (30) Calendar Days from the Effective Date of this Judgment, IMC shall submit a nuisance odor minimization plan to EGLE for review and approval for the modifications included below (Plan A). Nothing in this provision prevents IMC from taking other actions IMC believes will help mitigate potential odor complaints as long as the measures do not violate its permits and are

in compliance with Applicable Law. Once approved by EGLE, IMC shall implement Plan A and submit a permit application incorporating the plan into its Permit to Install. The workplan shall contain, at a minimum, the following:

- a. The requirement that within thirty (30) Calendar Days of the Effective Date of this Judgment, IMC shall install stacks on the E-coat drying oven that are at a minimum of sixty-five (65) feet above ground level and emit the exhaust gases unobstructed vertically to the ambient air with a push fan;
- b. The requirement that within thirty (30) Calendar Days of the Effective Date of this Judgment, IMC shall install afterburners on each burn off oven that IMC intends to use in its operations after the Effective Date. After installation, the afterburners shall be operated and maintained in a satisfactory manner when operating the burn off ovens or if a burn off oven is not fitted with an afterburner, it shall be rendered inoperable;
- c. The requirement that within thirty (30) Calendar Days after installation of the stacks and afterburners, IMC shall satisfactorily install, maintain, operate, and monitor the afterburners and stacks on the burn off ovens and the E-coat drying oven for the duration of the Judgment;
- d. The requirement that within thirty (30) Calendar Days after installation of the stacks and afterburners, IMC shall submit a

permit application to AQD to modify PTI No. 25-16 to include conditions that require IMC to satisfactorily install, maintain, operate, and monitor the afterburners and stacks on the burn off ovens and the E-coat drying oven. IMC shall be required to obtain the modified permit prior to termination of the Judgment. EGLE will act on the completed application for a permit as promptly as possible, in accordance with applicable rules.

- e. The requirement that within seven (7) Calendar Days after completing each modification specified in this Judgment, IMC shall notify the AQD Warren District Supervisor;
- f. The requirement that within thirty (30) Calendar Days after completing all the modifications specified in this Section of the Judgment, IMC shall conduct an odor evaluation of the processes at the Facility and determine if any processes are causing nuisance odors in violation of R 336.1901;
- g. The requirement that within thirty (30) Calendar Days after completing the odor evaluation, IMC shall submit a report to the AQD Warren District Supervisor that includes the odor evaluation results and identifies if the process modifications specified in Plan A in this Section of the Judgment were

effective or if additional measures are necessary to minimize nuisance odors.

5.3 If not already in place, IMC shall create and maintain monthly records of all materials, including paints, thinners, resins, biocides, and deodorizers, that are added to any portion of the E-coat process. The records should specify each material including paints and thinners, the amount used, and the stage of the process to which the materials were added.

5.4 IMC shall conduct daily inspections of the E-coat process prior to beginning operation. These daily inspections shall include physical investigations of each stage of the E-coat process and an identification of whether odors are detected from any portion of the process. Records of these daily inspections shall be maintained on-site for at least five (5) years and be made available to EGLE upon request.

5.5 If not already in place, IMC shall create and maintain logs of its daily cleanings to the E-coat process tanks, which shall include the date of the cleaning and the method and materials used to clean the tanks. The records shall be maintained for at least five (5) years and IMC shall make these records available to EGLE upon written or verbal request.

5.6 IMC shall submit to EGLE for approval a written operational plan for start-up of the E-coat drying oven within thirty (30) Calendar Days after the Effective Date of the Judgment.

5.7 Evaluation of compliance requirements if EGLE sends future Violation Notices regarding Rule 901.

- A. EGLE and IMC agree that the intention of this Paragraph is to assist both IMC and EGLE in investigating and identifying the underlying conditions at the Facility that may lead to nuisance odors and to provide IMC with the opportunity to address these conditions in a timely and effective manner pursuant to the timelines in this Judgment. Nothing in this Paragraph shall limit or supplant EGLE's right to enforce this Consent Judgment, IMC's permits, or Applicable Law.
- B. If EGLE determines IMC has an Established Rule 901 violation, as defined herein, at any time after the Effective Date of the Consent Judgment, then EGLE will send IMC a Violation Notice identifying the alleged violation under this Paragraph. The Violation Notice will include reasonable detail to permit IMC to identify the date of the alleged violation and the EGLE Representative confirming the violation. Upon request, EGLE will provide an investigation report detailing EGLE staff's investigation response to the alleged Rule 901 violation, as defined herein.
- C. Immediately following receipt of the Violation Notice sent electronically, IMC shall commence an investigation into the cause of the alleged violation set out in the Violation Notice. As

part of its investigation, IMC shall utilize a checklist of suspected causes of odorous conditions based upon past operating experience. IMC shall also regularly update the checklist based upon experience gained through its ongoing investigative efforts. Within five (5) Business Days of the Violation Notice sent electronically, IMC shall submit to EGLE a Report identifying its corrective action to resolve the alleged violation and any evidence gathered by IMC in the conduct of its investigation supporting its findings. If such investigation identifies one or more underlying site conditions that are the cause of the alleged violation, then IMC shall provide a written response that will include the condition(s) that are the cause of the alleged violation, including a plan identifying any changes to processes or procedures and/or capital expenditures required and the time frame within which it will commit to implement such remedial actions. This written Report will be provided even if there are two or more Established Rule 901 violations identified in a Violation Notice(s) issued within a sixty (60) Calendar Day period as described in Section 5.7(G) of this Judgment.

- D. IMC shall, within five (5) Business Days of receiving the Established Rule 901 Violation Notice sent electronically,

commence such remedial actions identified in IMC's report to EGLE to address such underlying conditions and will expeditiously pursue completion of such remedial actions in accordance with the report submitted to EGLE. Any additional Established Rule 901 violations occurring in the five (5) Business Day period do not trigger the requirement to implement the Remedial Action Plan as specified in Paragraph 5.7(G) below.

- E. Immediately following completion of the remedial actions, IMC shall provide documentation to EGLE that the underlying site condition has been resolved along with reasonable supporting evidence of completion of its plan indicated in the Report. If, as a result of such investigation, IMC concludes that activities at the Facility are not the source or cause of the alleged violation, it will provide EGLE with the evidence relied on by IMC to support its conclusion.
- F. Within ten (10) Business Days of the date of IMC's report sent electronically EGLE shall provide written comments on the adequacy of the remedial actions to IMC, including whether additional remedial actions are necessary. Within ten (10) Business Days of the date of EGLE's comments sent electronically, IMC shall provide a written response to EGLE

addressing them. EGLE shall send IMC written acknowledgement if EGLE determines that IMC has demonstrated either (a) the Facility was not the source of the alleged odor; or (b) the odor referenced in the Violation Notice has been rectified.

- G. The following obligations and time periods are in effect if the Remedial Action Plan is triggered:
- i. After four (4) months from the Effective Date of this Judgment, if two or more Established Rule 901 violations, as defined herein, are made within sixty (60) Calendar Days during any time period for the duration of this Judgment, unless the second Established Rule 901 violation occurs within five (5) Business Days of the first Established Rule 901 violation, IMC will implement a Remedial Action Plan described in Section 5.7(C) that specifically includes the following: hiring a consultant to review the ongoing odor sources and necessary remedial actions to comply with Rule 901, including but not limited to reformulation of the E-coat formula, installation of an oxidizer, or other effective control measure to abate nuisance odors; and creating a timely implementation schedule for the remedial actions identified;

- ii. Within forty-five (45) Calendar Days of the date of the Violation Notice sent electronically which identifies the second of two Established Rule 901 violations occurring within a sixty (60) Calendar Day period, IMC shall submit the Remedial Action Plan for EGLE's review and approval;
- iii. Within forty-five (45) Calendar Days of IMC's Remedial Action Plan sent electronically, AQD shall, in writing, issue a response in which it will: (1) approve in whole or in part the submission; (2) approve in whole or in part the submission upon specified conditions; (3) disapprove in whole or in part, the submission requiring IMC to correct the deficiencies;
- iv. IMC shall, within thirty (30) Calendar Days or such longer time as specified by AQD in such response, address any requested changes or deficiencies and resubmit the plan for approval. Upon approval, the revised plan shall be incorporated into and enforceable under this Consent Judgment and IMC shall take any action required by the plan in accordance with the schedules and requirements specified therein.

H. If IMC implements changes to its operations per paragraph 5.7 (G) above that are unsuccessful in eliminating nuisance odors, and it subsequently receives two (2) or more Established Rule 901 violations, as defined herein, in any sixty (60) Calendar Day period during the period of this Judgment, the parties agree to resort to dispute resolution to determine further odor control measures.

VI. REVIEW AND APPROVAL OF SUBMITTALS

6.1 For the workplans identified in Section V above, and any other document required by this Judgment to be submitted to EGLE for review and approval, the following process and terms of approval outlined in this Section shall apply.

6.2 The workplans required by Section V (Compliance Requirements), above, shall contain all the information required by the applicable paragraphs of this Judgment.

6.3 **Initial Submission.** Upon submission of the workplans required by Section V (Compliance Requirements), above, and any other document submitted for review and approval, EGLE shall promptly, in writing: (1) approve, in whole or in part, the submission; (2) approve, in whole or in part, the submission upon specific conditions; (3) disapprove, in whole or in part, the submission, requiring IMC to correct the deficiencies; or (4) any combination of the foregoing.

6.4 Resubmissions. Upon receipt of a notice of approval in part; approval, in whole or in part, upon specified conditions; disapproval in whole or in part; or any combination of the foregoing, IMC shall, within thirty (30) Calendar Days or such longer time as specified by EGLE in such notice, correct the deficiencies and resubmit the workplan or other document to EGLE for approval. Failure by IMC to resubmit an approvable workplan or document that corrects the deficiencies identified by EGLE shall constitute a violation of this Judgment.

6.5 Upon EGLE approval, or approval upon specific conditions, the workplans required by Section V (Compliance Requirements), above, shall be incorporated by reference into this Judgment and shall be an enforceable part of this Judgment.

6.6 Any delays caused by IMC's failure to submit an approvable workplan or other document in conformance with this Judgment shall in no way affect or alter IMC's responsibility to comply with any other provision of this Judgment.

6.7 No informal advice, guidance, suggestions, or comments by EGLE regarding the workplan or any other document shall be construed as relieving IMC of its obligation to obtain written approval when required by this Judgment.

VII. DISPUTE RESOLUTION

7.1 The dispute resolution procedures of this Section VII shall be the exclusive mechanism to resolve disputes arising under this Judgment and shall apply to all provisions of this Judgment, except Section 5.7(G)(i) which reflects that Remedial Action Plan measures are required if IMC receives two or more

Established Rule 901 violations within sixty (60) Calendar Days during any time period of the Judgment.

7.2 Informal Dispute Resolution. Any dispute that arises under this Judgment shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when a Party sends a written Notice of Dispute describing the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Calendar Days from the date the dispute arises, but it may be extended by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then EGLE shall provide a written statement of its position regarding the dispute to IMC within thirty (30) Calendar Days following the end of informal negotiations. EGLE's position shall be considered binding unless, within thirty (30) Calendar days after EGLE provides the written statement of its position, IMC invokes the formal dispute resolution procedures set forth in Paragraph 7.3, below.

7.3 Formal Dispute Resolution. IMC shall invoke formal dispute procedures, within the time period provided in the Paragraph 7.2, above, by serving on EGLE a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting IMC's position and any supporting documentation relied upon by IMC.

7.4 EGLE shall serve its Statement of Position electronically within forty-five (45) Calendar Days of the date IMC's Statement of Position was electronically

sent. EGLE's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting EGLE's position, and any supporting documentation relied upon by EGLE. EGLE's Statement of Position shall be binding on IMC unless IMC files a motion for judicial review of the dispute in accordance with paragraph 7.5, below.

7.5 IMC may seek judicial review of the dispute by filing with the Court and serving on EGLE, in accordance with Section XII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Calendar Days after the date of EGLE's Statement of Position, sent electronically, pursuant to the preceding paragraph. The motion shall contain a written statement of IMC's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested, and any schedule within which the dispute must be resolved to insure orderly implementation of this Judgment. If the Court orders mediation or if both parties stipulate to mediation, the parties agree to Paula Manis as the mediator, if she is available.

7.6 EGLE shall respond to IMC's motion within the time period allowed by the Michigan Court Rules.

7.7 Standard of Review. In any dispute regarding this Consent Judgment for which IMC seeks judicial review pursuant to Paragraph 7.5, the provisions, clauses, terms, and conditions contained in this Judgment shall be reviewed according to applicable principles of law and the Rules of Construction.

7.8 The invocation of dispute resolution procedures under this Section VII (Dispute Resolution) shall not of itself extend or postpone any obligation of IMC under this Judgment, unless and until final resolution of the dispute so provides. Notwithstanding the invocation of the dispute resolution procedures, stipulated penalties, with any applicable interest, shall accrue from the first day of any failure or refusal to comply with any term or condition of this Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that IMC does not prevail on the disputed issue, stipulated penalties and any applicable interest shall be paid within thirty (30) Calendar Days in the manner provided for in Paragraph 11.2 of this Judgment. IMC shall not be assessed stipulated penalties or interest of any kind for disputes resolved in its favor.

VIII. RECORDKEEPING

8.1 Upon written or verbal request by an authorized representative of EGLE, IMC shall make available to EGLE specifically requested records, plans, logs, and other documents required to be maintained under this Judgment or pursuant to Part 55 of the NREPA, the administrative rules promulgated pursuant to Part 55 of the NREPA, PTI No. 106-94, or PTI No. 25-16, including any revisions or amendments. Documents required by this Judgment shall be retained by IMC for at least a period of five (5) years from the date of generation of the record unless otherwise required by this Judgment or by Part 55 of the NREPA, the administrative rules promulgated pursuant to Part 55 of the NREPA, or PTI No. 106-94 and PTI No. 25-16, including any revisions or amendments.

8.2 All records kept by IMC shall be legible.

8.3 IMC may keep electronic copies of the records required under this Section VIII as portable document format (PDF) files with the *.pdf extension, or in another electronic format approved by the AQD District Supervisor such as an excel spreadsheet. Electronic copies of records are subject to the same requirements as physical records, including retention periods, storage at the site, availability to EGLE, and legibility.

IX. RIGHT OF ENTRY

9.1 IMC shall allow any authorized, duly credentialed representative or fully insured contractor of EGLE to enter the premises of the Facility and park (with insured vehicles only) in designated parking at reasonable times for the purpose of monitoring compliance with the provisions of this Judgment. EGLE representatives must first announce themselves to IMC's main office upon arrival. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

X. CIVIL FINE

10.1 Within thirty (30) Calendar Days after the Effective Date of this Judgment, IMC shall pay a total civil fine of \$7,500 to EGLE. Payment shall be made in the form of a certified check or cashier's check and made payable to the "State of Michigan." Payment shall be sent to:

Michigan Department of Environment, Great Lakes, and Energy
Accounting Services Division, Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

To ensure proper credit, the check shall reference *Michigan Department of Environment, Great Lakes, and Energy v Fricia Enterprises, d/b/a Industrial Metal Coating Co.*, and Payment Identification Number AQD40289.

10.2 Interest. If any portion of the civil fine due to EGLE is not paid when due, then IMC shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in MCL 600.60103(8).

XI. STIPULATED PENALTIES

11.1 Stipulated Penalties. The Parties stipulate to the payment of penalties as follows if IMC fails to comply with the terms of this Judgment. The Dispute Resolution process at Section VII applies to Stipulated Penalties.

- a. After the Effective Date of this Judgment, IMC shall pay a stipulated penalty of \$500 per established violation per day for failure to comply with any provision of PTI No. 106-94 or PTI No. 25-16 or any subsequent permit revision of PTI No. 106-94 or PTI No. 25-16, or for failure to comply with any other provision of this Judgment.
- b. If EGLE issues a Violation Notice to IMC for an Established 901 violation, as defined herein, after four (4) months from the Effective Date of this Judgment, or after sixty (60) Calendar

Days following the installation of the new stacks on the bake oven and the assorted push fans, whichever occurs earlier, then IMC will pay a stipulated penalty of \$3,500 per established violation per day. In the event EGLE conducts a complaint investigation and detects odors in violation of Rule 901 originating from IMC, EGLE will notify Phil Oliver or a representative of IMC.

- c. After the Effective Date of this Judgment, IMC shall pay a stipulated penalty of \$3,500 per established violation per day for failure to comply with any other requirements of Section V and Section X of this Judgment.

11.2 IMC shall pay all accrued stipulated penalties within thirty (30) Calendar Days after written demand by EGLE. Payment shall be made in the form of a certified check or cashier's check and made payable to the "State of Michigan." Payment shall be sent to:

Michigan Department of Environment, Great Lakes, and Energy
Accounting Services Division, Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

To ensure proper credit, the check shall reference *Michigan Department of Environment, Great Lakes, and Energy v Fricia Enterprises, d/b/a Industrial Metal Coating Co.*, and Payment Identification Number AQD40289-S.

11.3 Payment of stipulated penalties shall not alter or modify in any way IMC's obligation to comply with the terms and conditions of this Judgment.

11.4 The provisions of this Section shall not bar EGLE from seeking any additional remedies or sanctions available to it for any violation of this Judgment or any other provision of Applicable Law.

11.5 EGLE, at its discretion, may seek stipulated penalties or statutory civil fines for any violation of this Judgment that is also a violation of any provision of Applicable Law. However, EGLE is precluded from seeking both a stipulated penalty under this Judgment and a statutory civil fine for the same violation.

11.6 To ensure timely payment of any stipulated penalties assessed pursuant to this Judgment, IMC shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Judgment. The interest payment shall be determined pursuant to MCL 600.6013(8) using the full increment of amount due as principal, calculated from the due date specified in this Judgment until the date that the delinquent payment is finally paid in full. Payment of an interest penalty by IMC shall be made to the State of Michigan in accordance with Paragraph 11.2 of this Judgment. Interest payments shall be applied first toward the most overdue amount or outstanding interest penalty owed by IMC before any remaining balance is applied to subsequent payment amount or interest penalty.

11.7 By no later than thirty (30) Calendar Days after the date of a written demand for stipulated penalties sent electronically, IMC may dispute liability for any or all stipulated penalties demanded by invoking the dispute resolution procedures of Section VII (Dispute Resolution).

XII. NOTICES

12.1 Any submittal, notice, report, or documentation required by this

Judgment shall be submitted to the attention of:

For EGLE: Joyce Zhu, Warren District Supervisor
Michigan Department of Environment, Great Lakes, and Energy
Air Quality Division
Warren District Office
27700 Donald Court
Warren, Michigan 48092-2793
ZhuJ@michigan.gov

Jenine Camilleri, Enforcement Unit Manager
Michigan Department of Environment, Great Lakes, and Energy
Air Quality Division
Constitution Hall
525 West Allegan
P.O. Box 30260
Lansing, Michigan 48909-7760
CamilleriJ@michigan.gov

For Defendant:

Copy to: Robert Charles Davis
Attorney for Defendant
10 S. Main Street, Ste. 401
Mt. Clemens, Michigan 48043
(586) 469-4300
rdavis@dbsattorneys.com

Either party may substitute for those designated to receive such notices by providing prior written notice to the other party.

XIII. RECORD RETENTION

13.1 Until five (5) years after the termination of this Judgment, IMC shall retain, and shall instruct its contractors, agents, and representatives to preserve all non-identical copies of records, documents, or other information (including records,

documents, and other information in electronic form) in its or its contractors', agents', or representatives' possession or control that materially relate in any manner to IMC's performance of its obligations under this Judgment.

XIV. FORCE MAJEURE

14.1 "Force majeure," for purposes of this Judgment, is defined as any event arising from causes beyond the control of IMC, of any entity controlled by IMC, or of IMC's contractors that delay or prevent the performance of any obligation under this Judgment despite IMC's best efforts to fulfill the obligation. The requirement that IMC exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include IMC's financial inability to perform any obligation under this Judgment.

14.2 If any event occurs or has occurred that may delay the performance of any obligation under this Judgment, whether or not caused by a force majeure event, IMC shall provide notice by telephone or by email to EGGLE within seventy-two (72) hours after IMC first knew that the event might cause a delay. Within seven (7) Business Days thereafter, IMC shall provide in writing to EGGLE an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the

delay or the effect of the delay; IMC's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of IMC, such event may cause or contribute to an endangerment to public health, welfare, or the environment. IMC shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude IMC from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. IMC shall be deemed to know of any circumstance of which IMC, any entity controlled by IMC, or IMC's contractors knew or should have known.

14.3 If EGLE agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Judgment that are affected by the force majeure event will be extended by EGLE for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EGLE will notify IMC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

14.4 If EGLE does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, then EGLE will notify IMC in writing of its decision.

14.5 If IMC elects to invoke the dispute resolution procedures set forth in Section VII (Dispute Resolution), then it shall do so no later than fifteen (15) Calendar Days after EGLE's electronic notice. In any such proceeding, IMC shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that IMC complied with the requirements of this Section XIV (Force Majeure). If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by IMC of the affected obligation of this Judgment identified to EGLE and the Court.

XV. GENERAL PROVISIONS

15.1 Third Parties. This Judgment does not limit or affect the rights of IMC or EGLE against any third parties.

15.2 Severability. Should any provision of this Judgment be declared by a court of competent jurisdiction to be inconsistent with state or federal law and, therefore, unenforceable, the remaining provisions shall remain in full force and effect.

15.3 Modification. Any party to this Judgment may petition the Court for modification of this Judgment prior to EGLE filing the Satisfaction of Judgment described in Section XVI. Any modification must be in writing and approved by the Court. No party may petition the Court for a modification of this Judgment without

first having made a good faith effort to reach an agreement with the other party on the terms of any such modification.

15.4 Other Laws. This Judgment in no way affects IMC's responsibility to comply with any other applicable state, federal, or local laws or regulations, or with any order of this or any other Court.

15.5 Settlement. This Judgment is in full settlement and satisfaction of all matters alleged in the Complaint.

XVI. TERMINATION

16.1 This Judgment shall terminate five (5) years after the Effective Date provided that IMC submits to EGLE a written request to terminate the Judgment. This written request shall include a summary of the activities performed to comply with the provisions of the Judgment, certify that the civil fine and any stipulated penalties owed to EGLE under Section X (Civil Fine) and Section XI (Stipulated Penalties) of this Judgment have been paid in full, and that IMC is in full compliance with all other provisions of the Judgment. Thereafter, provided full compliance with the provisions of this Judgment has been achieved, EGLE shall file with the clerk a Satisfaction of Judgment pursuant to MCR 2.620(1).

XVII. RETENTION OF JURISDICTION

17.1 Prior to the termination of this Judgment under Section XVI, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Judgment, to assess stipulated fines, or to take any action necessary or appropriate for construction or implementation of this Consent Judgment.

IT IS SO ORDERED THIS 2 DAY OF September, 2022.

WANDA M. STOKES

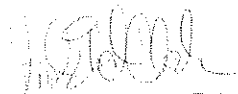
Honorable Wanda M. Stokes
Circuit Court Judge

STIPULATION

The parties hereby stipulate to the entry of this Consent Judgment. Notice and hearing on entry of the above order is waived.

FOR PLAINTIFF:

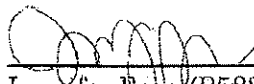
Michigan Department of Environment, Great Lakes, and Energy

By: 
Liesl Eichler Clark, Director
Department of Environment,
Great Lakes, and Energy

Dated: 8/25 2022

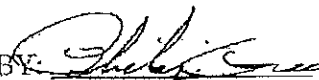
Approved as to form:

Michigan Department of Attorney General

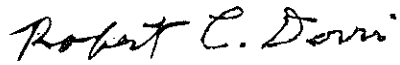
By: 
Jennifer Rosa (P58226)
Assistant Attorney General
Attorney for Plaintiff
Environment, Natural Resources,
and Agriculture Division

Dated: 8-25 2022

FOR DEFENDANT:

By: 
Philip Oliver, Owner
Fricia Enterprises, Inc.,
d/b/a Industrial Metal Coating

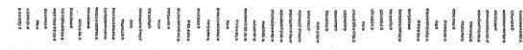
Dated: 8-24 2022

By: 
Robert Charles Davis (P40155)
Attorney for Defendant

Dated: 8-25 2022



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Lansing, MI 48909



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ENRA DIVISION

SEP 16 2022

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