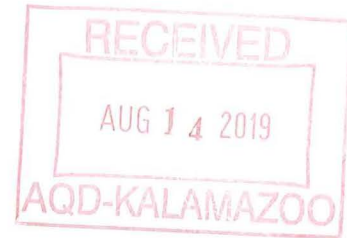


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August 9, 2019

Ms. Amanda Chapel
Environmental Quality Analyst
EGLE, Air Quality Division – Kalamazoo District
7953 Adobe Rd.
Kalamazoo, MI 49009-5025

RE: PRELIMINARY RESPONSE OF RJ INDUSTRIAL RECYCLING TO MAY 23, 2019 ALLEGED VIOLATION NOTICE LETTER; SRN: U13080312, CALHOUN COUNTY

Dear Ms. Chapel:

We are writing on behalf of and as legal counsel for RJ Industrial Recycling (“RJI”) and are furnishing the following information and progress report to you on behalf of our clients in response to your May 23, 2019 letter. Your letter alleges that on May 8, 2019, the date of your inspection, torch cutting processes were being operated outdoors at RJI’s business location at 989 North Raymond Rd., Battle Creek, Michigan and that these torch cutting processes did not meet the exemption criteria for Rule 285(2)(j)(i) or 285(2)(j)(ii) which you indicate may be a violation of EGLE Rule 201 of the administrative rules promulgated under Act. 451. Additionally, your letter alleges that AQD staff also observed that after torching operations ceased, products were allowed to smolder and flame for an extended period of time, without attempt to extinguish them which you indicate may be a violation of EGLE Rule 310 of the Administrative Rules promulgated under Act 451. While our clients do not concede that they have violated any of the requirements of the Federal Clean Air Act; Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451); or the Air Pollution Control Rules, RJI is committed to cooperating with EGLE in resolving the issues raised by it.

Our client has and will continue to cooperate with EGLE, and appreciates your continuing assistance as it addresses the matters raised in your letter.

You asked in your letter that RJI initiate actions necessary to correct the cited alleged violations and submit a written response to the Alleged Violation Notice by June 14, 2019 providing the following information: the dates that the alleged violations occurred; an explanation of the causes and duration of the alleged violations; whether the alleged violations are ongoing; summarize the actions taken and which are proposed to be taken to correct the alleged violations; the dates by which these actions will take place; and to identify the steps being taken to prevent recurrence of the alleged violations.

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A Freedom of Information Act request was submitted to EGLE in order for RJI to respond to the Alleged Violation Notice. In view of the complications experienced by EGLE in responding to the FOIA request, and the additional time required by EGLE to respond to the FOIA request, RJI agreed with EGLE that RJI's response would be due by Friday, August 9, 2019 following its receipt of the complete documentation and final response from EGLE and fulfillment of its FOIA obligations.

On July 22, 2019, we received photographs and videos from EGLE as part of the FOIA production. Then on July 25, 2019, we received additional documents along with an explanation letter identifying those documents or materials not provided or which were withheld from the FOIA production.

Even though EGLE's production is incomplete, RJI submits this Preliminary Response to the May 23, 2019 Alleged Violation Notice in its continuing full cooperation with EGLE, subject to RJI's reservation of its rights to supplement this Preliminary Response. RJI does not waive any of its objections to EGLE's incomplete production, and reserves the right to supplement this Preliminary Response to the Alleged Violation Notice after EGLE has fully complied with its obligations pursuant to the Freedom of Information Act.

SUMMARY RESPONSE

As you know, RJI has made a substantial investment over a number of years in the development of air emission control technology, "SPARCS", which USEPA has endorsed, and which RJI utilizes in appropriate circumstances and conditions to reduce or eliminate VEs in connection with torch cutting of certain materials and objects.

RJI has at all times and continues to cooperate with EGLE in connection with its requests. It has provided access to its facility when requested as well as to its personnel. Significantly, since there has been an apparent disagreement in the subjective findings of VE9 readings in the past RJI offered to bring staff from Eastern Technical Associates Inc. of Raleigh, North Carolina, the VE9 trainers, at its expense, to Michigan to undertake joint training sessions with RJI's representatives and EGLE's staff. EGLE has not responded to this request which has been repeatedly made, given references in EGLE's various activity reports concerning RJI's facility which are unsupported by VE9 technical data and appear to be entirely subjective.

In addition, while referring to revised Rule 285(2)(j), EGLE does not refer to the exemption provided to torch cutting operators like RJI who perform non-production dismantling of materials brought to the RJI property. While citing Rule 285(2)(j)(ii), this rule as written applies to scrap metal recycling and/or demolition activities that have emissions that are released "only into the general in-plant environment." The work being performed by RJI was not performed within an in-plant environment, but outside, and there were no emissions released "into" the "general in-plant environment" and accordingly it appears the cited provision is inapplicable. Instead, RJI's activities were subject to Rule Exemption 285(2)(j)(i) "activities performed on a non-production basis such as maintenance, repair, and dismantling." Accordingly, RJI believes the Alleged Violation Notice was issued in error and should be withdrawn.

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Since receipt of your May 23, 2019 alleged Violation Notice letter, and as a direct result of those allegations and EGLE's unwillingness to withdraw those allegations, RJI has undertaken the following actions at its Battle Creek facility at great cost and expense, and irreparable harm to RJI and its employees.

- 1) RJI has ceased processing most scrap metal at Battle Creek, and is now utilizing the facility to solely receive metal materials for transfer to other locations, including RJI's Flint location, if further processing is necessary.
- 2) RJI has ceased almost all torch cutting at Battle Creek since receipt of EGLE's May 23, 2019 alleged Violation Notice letter, and as a result has had to terminate employees that it could not otherwise repurpose, including torch operators from its Battle Creek facility, as it phases out this business. RJI has presently terminated almost 30% of its Battle Creek workforce as a direct result of EGLE's alleged Violation Notice.
- 3) The only materials for which torching operations will continue at Battle Creek are those associated with the occasional dismantling of rail cars, to be sized for transport to RJI's Flint facility for further processing, and the dismantling of oversize (including overweight) items to be shipped offsite for further processing.
- 4) RJI has dropped a major customer which for years delivered power transmission line and coiled cable for processing at the Battle Creek facility. (The torched materials observed by EGLE and upon which it's May 23, 2019 alleged Violation Notice was based were from this long-term customer of RJI.) Dropping this major client will economically damage RJI in excess of \$100,000 per year.

Thus, EGLE's actions have not only dramatically damaged the company financially, those actions have cost employees their livelihoods.

In addition, notwithstanding the erroneous bases and misapplication of Rule 336.1201 (no "Permit to Install") and Rule 336 13.10 ("Open Burning") relied upon by EGLE upon which it asserts the alleged Violation Notice letter of May 23, 2019, RJI has undertaken additional actions.

"Permit to Install"

EGLE erroneously asserts that RJI is in violation of the Permit to Install Rule (R336.1201). The rule expressly limits its scope to the "installion, construction, reconstruction, relocation, or modification of any process or process equipment... unless a Permit to Install that authorizes such action is issued by the department."

Use of portable torch cutting equipment to dismantle metal objects for recycling is not "installation, construction, reconstruction, relocating or modification of any process or process equipment". Thus, on its face, Rule 336. 1201 *et seq* does not apply to RJI and there is no violation. RJI requests this alleged violation be withdrawn.

EGLE further erroneously asserts that Rule 336.1285 pertaining to Permits to Install exemptions supports its allegation that RJI is in violation of that rule.

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However, as previously stated to EGLE, that exemption does not require RJI to obtain a Permit to Install, since its use of torch cutting operations is in connection with the “dismantling” of metal objects, which the Rule expressly provides does **not** require either a Permit to Install nor does it require such activities to be undertaken within a building. EGLE misapplies 336.1285 (j)(ii) for the proposition that RJI’s work being undertaken outside was in violation of the Rule.

As previously stated that Rule only applies to “scrap metal recycling and/or demolition activities that have emissions that are **released only into the general in-plant environment** and or that have externally vented emissions equipped with and appropriately designed and operated enclosure and fabric filter.”

On its face this rule does not apply since the very work observed by EGLE for which it alleges RJI was in violation was conducted **outside**, and there was **no release into the general in-plant environment**. There was no violation of the rule since the activity upon which the alleged violation was based did not take place within, nor was there a release “**into the general in-plant environment**” since all activities were performed outside. Accordingly, RJI requests that this violation be withdrawn.

“Open Burning”

EGLE erroneously alleges that RJI was in violation of the “open burning” regulation or rule (Rule 336.1310) which provides in pertinent part: “(1) A person shall not cause or permit open burning of **refuse, garbage, or any other waste materials**, except for the burning of any of the following...”

RJI’s torch cutting operations are not and do not constitute “open burning” as defined by the regulation. RJI does not burn “**refuse, garbage, or other waste materials**“. RJI submits that, based upon the photographic documents produced by EGLE in partial response to RJI’s outstanding FOIA request, what was observed is not “open burning”, but torch cutting operations, properly utilized in the dismantling of metal objects, consistent with Rule 336.1201 *et seq.*

“Further Efforts to Address Violations”

Notwithstanding the foregoing, RJI is constructing a structure measuring 60’ x 40’ x 24’ in height mounted on railroad wheels and rails (Exhibit 1) at its Flint facility, at which all torch cutting will take place, other than the dismantling of oversize (including overweight) items for further processing, or torch cutting in the SPARCS unit, as appropriate. The new structure will be constructed in a manner consistent with Rule 285(2)(j)(ii) exemption.

The rolling structure described above is awaiting completion. RJI is meeting with the utility company to assess power needs and delivery of power to the facility; it is in the process of acquiring the air movement and processing equipment to be incorporated with the structure, including a squirrel cage, cyclone system, and filtration systems before air is exhausted from the structure. It is presently anticipated that the rolling structure, including the air system, will be completed, tested and placed in service within the next 6 to 8 weeks.

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RJI has also acquired a new excavator with a shear capable of mechanically cutting much of the material that has heretofore been torch-cut. RJI has expended in excess of \$350,000 for this equipment.

RJI has modified its business model to accommodate and respond to EGLE's requests and asserted alleged violations, has substantially downsized its operations, cutting its workforce by almost 60%, and its torch-cutting workforce by more than 40%.

Once again, EGLE's actions have not only dramatically damaged the company financially, those actions have cost employees their livelihoods.

RJI reserves the right to supplement this response.

Given the nature of the work undertaken by RJI, being exempt under Rule 285(2)(j)(i) and based upon the fact that none of the VE-9 readings attached to and supporting the alleged complaint giving rise to the Violation Notice Complaint Investigation exceed Rule 301 requirements, RJI respectfully requests that the Violation Notice be dismissed and withdrawn.

Introduction

After EGLE issued its Violation Notice letter, RJI submitted a Freedom of Information Act (FOIA) request to EGLE to assist it in evaluating the information upon which EGLE relied in issuing its alleged violation notice. In addition, the FOIA request sought copies of all records of EGLE AQD relating to the site visit on May 8, 2019, including but not limited to visible emissions (VE) readings, photos, notes, electronic and recorded records and any other records to SRN: U13080312, Calhoun County, Violation Notice May 23, 2019, a copy of Method VE-9 manual/guidance utilized by AQD, certification of training for AQD staff making the observations and reports, copies of the underlying complaint documents, as well as copies of each of the documented RJ Industrial Recycling/RJ Torching, Inc. complaints received by year.

Based upon a review of the documents produced pursuant to FOIA, it appears that the alleged Violation Notice should be withdrawn as stated above.

RJI is optimistic that upon review of RJI's responses, EGLE will reconsider the Violation Notice, or otherwise determine that RJI has complied with the requirements of Rule 201 and Rule 310.

The following is RJI's response to each of the Rule/Permit Conditions for which EGLE issued its Violation Notice letter of May 23, 2019.

A. Cited Alleged Violation of Rule 336.1201 No Permit to Install (PTI)

- (1) **One torch cutting process was observed being operated outdoors. This process did not meet the Rule 285(2)(j) exemption criteria.**

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Response:

For the reasons set forth above, the Violation Notice pertaining to Rule 201 should be withdrawn as the activities undertaken by RJI are exempt under Rule 285(2)(j)(i).

B. Cited Alleged Violation of Rule 336.1310 Open Burning

(2) Staff observed a pile of scrap metal allowed to smolder and flame as employees continued to torch cut a second pile of scrap

Response:

EGLE erroneously alleges that RJI is in violation of the “open burning” regulation or rule (Rule 336.1310) which provides in pertinent part: “(1) A person shall not cause or permit open burning of **refuse, garbage, or any other waste materials**, except for the burning of any of the following...”

RJI’s torch cutting operations are not and do not constitute “open burning” as defined by the Rule. RJI does not burn “**refuse, garbage, or other waste materials**“. RJI submits that, based upon the photographic documents produced by EGLE in partial response to RJI’s outstanding FOIA request, what was observed is not “open burning”, but torch cutting operations, properly utilized in the dismantling of metal objects, consistent with Rule 336.1201 *et seq.* EGLE also alleges that RJI allowed open burning to take place without an attempt to extinguish it. Please note that if water were sprayed on the smoking metal and slag, this could cause the flashing of hot steam or cause an explosion, potentially causing injury to employees and property damage. Accordingly, RJI advises against any activity that could likely cause personal injury to its employees.

RJI continues to reserve its rights, and incorporates, in total, its Summary Response above. It will continue to cooperate with EGLE to achieve a resolution of the alleged Violation Notice.

Conclusion

For the reasons set forth above, RJI respectfully requests that EGLE reconsider its Violation Notice letter dated May 23, 2019, and agree to participate in the Eastern Technical Associates site specific assessment of the VE sources at RJI’s business location in Flint, MI. to help identify the sources of visible emissions and establish sound guidelines for performing visible emission observations.

In addition, RJI is continuing to implement new procedures to improve its abilities to minimize air emission issues, and has undertaken to address each of the issues raised by EGLE, which were separately investigated by RJI. As a result, RJI has made improvements to its procedures and has improved the monitoring and supervision of its BMPs, and is also constructing a structure on-site for torch cutting which will conform with Rule 285(2)(j)(ii) exemption, which construction had been delayed by the extreme wet weather, but is expected to be completed and tested within the next 6-8 weeks.

KOTZ SANGSTER WYSOCKI P.C.

August 9, 2019

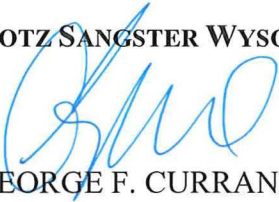
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RJI will continue to cooperate with EGLE and work to improve its procedures so that VE's can be further reduced.

Please let us know when the remaining FOIA materials will be produced so additional supplementation can be provided to this preliminary response.

Very truly yours,

KOTZ SANGSTER WYSOCKI P.C.



GEORGE F. CURRAN, III

GFC/med

**Via US First Class Mail
and Email to chapelA@michigan.gov**

cc: RJ Torching, Inc., Mr. Jason Roughton (Via Email)

Ms. Jenine Camilleri, Enforcement Unit Supervisor (Via U.S. First Class Mail)
EGLE AQD
P.O. Box 30260
Lansing, MI 48909-7760

EXHIBIT 1









