

Via e-mail and US Mail

May 30, 2019



Mr. Greg Morrow
Assistant District Supervisor
Materials Management Division
Warren District Office
Department of Environment, Great Lakes, and Energy
27700 Donald St.
Warren, MI 48092-2793

**Re: *Violation Notice – Solid Waste Transfer
Detroit Renewable Power, LLC
5700 Russell Street, Detroit, Wayne County
Waste Data System Number 415371***

Dear Mr Morrow:

This letter responds on behalf of Detroit Renewable Power, LLC (“DRP”) to the Department of Environment, Great Lakes, and Energy’s (“EGLE”) April 25, 2019 violation notice (the “Notice”) concerning DRP’s operation of its municipal solid waste incinerator (the “Facility”).

The following responds to the numbered paragraphs in the Notice:

1. Paragraph 1 of the Notice quotes an excerpt from Section 11509(1) of Part 115 of the Natural Resources and Environmental Protection Act (“Part 115”), M.C.L. § 324.11509(1), without any further allegation. No response is necessary; however, DRP denies that it has violated this section.

2. Paragraph 2 of the Notice contains the following assertions: (i) DRP is operating the Facility as a “solid waste transfer facility” that is subject to Part 115’s construction permit, operating license, and county plan provisions; (ii) the Facility is neither permitted nor licensed as transfer facility; (iii) the operation of a transfer facility at the Facility is not authorized under the approved Wayne County Solid Waste Management Plan; and (iv) the Facility does not meet the criteria in Section 11529(1) that exempts transfer facilities from Part 115’s construction permit and operating license requirements. Further, although EGLE acknowledges that Condition IX.11 of DRP’s Renewable Operating Permit (“ROP”) expressly authorizes DRP to reload up to 20,000 tons of solid waste per week into transfer trailers for off-site disposal, EGLE concludes that this “condition should not be construed as allowing a continuing operation as a solid waste transfer facility” and that “EGLE does not have authority under Part 115 to issue County Plan authorizations, construction permits, or operating license for a solid waste transfer facility in

Mr. Greg Morrow

May 30, 2019

Page 2

such a manner (i.e., via a ROP condition).” These assertions are wrong in two important respects.

First, EGLE incorrectly characterizes the current disposal area type at the Facility as a “solid waste transfer facility.” The only disposal area type that DRP currently operates, or has ever operated, at the Facility is in fact an “incinerator,” *i.e.*, “a device which is ***specifically designed for the destruction, by burning, of garbage or other combustible refuse or waste material.***” Mich. Admin. Code r. 299.4103(m) (emphasis added). Although DRP’s incinerator operations inherently involve many activities that overlap with other disposal area types, such as solid waste processing and transfer facilities, DRP’s conduct of these overlapping activities does not subject the Facility to the permitting, licensing or other requirements applicable to those other disposal area types. So long as the Facility as a whole remains designed for destruction by burning, the entire Facility is an “incinerator” for purposes of Part 115 regardless of whether “destruction by burning” takes place on any given day.

Because DRP operates its incinerator under the authority of its ROP, the entire Facility is exempt from Part 115’s construction permit and operating license requirements by operation of Section 11529(2). M.C.L. § 324.11529(2). In fact, EGLE has previously determined that this exemption extends to the solid waste transfer activities at the Facility, as authorized in the ROP. In response to the Sierra Club’s April 11, 1991 comment on the then-draft ROP that the “*Air Quality Division may not issue an Act 641 license for this facility to act as a transfer station independent of review by the Waste Management Division,*” the following handwritten notation appears on EGLE’s April 12, 1991 Summary of Comments Received (copy enclosed as Exhibit A): “*Steve ... in law 641 sec 22 ... already allowed.*” The handwriting of this notation has been identified as Lynn Fiedler’s, the EGLE permit engineer at the time and later AQD Chief (now retired), and the name “Steve” almost certainly refers to Steve Chester, the Assistant Attorney General in charge of litigation regarding the Facility at the time. The only logical inference from this notation is that Mr. Chester and Ms. Fielder discussed the Sierra Club’s objection and concluded that the exemption in Section 11529(2) (then Section 22a of Act 641) extended to the transfer activities permitted in the ROP.¹ EGLE cannot now claim the opposite interpretation is correct. Thus, because DRP operates an exempt incinerator, and not a solid waste transfer facility, EGLE’s assertions regarding Part 115’s transfer facility permitting, licensing and county planning requirements are moot.

Second, EGLE misinterprets Condition IX.11 of the ROP as being somehow inoperative during the Facility’s current operational status. EGLE asserts that this condition “***should*** not be construed as allowing a continuing operation as a solid waste transfer facility.” The plain meaning of the language in License Condition IX.11, however, dictates that EGLE’s construction is incorrect. This condition states:

¹ In case there is any remaining doubt whether this ROP provision passed EGLE’s and the Attorney General’s legal review, it should be noted that this provision was also included as a condition in Consent Order APC No. 3-1991, which was approved as to both form and content by EGLE and the Attorney General’s Office, and to which EGLE remains bound.

Permittee ***shall*** be allowed to operate the facility independently as a transfer station, as defined in Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, Michigan Compiled Laws (MCL) § 324.11501 et seq. It ***shall*** be permissible to process 20,000 tons of solid waste per week, or the quantity of solid waste delivered, whichever is less, to be reloaded to transfer vehicles

The permission granted by EGLE under this condition is mandatory: DRP ***shall*** be allowed to transfer waste, and the stated tonnage ***shall*** be permissible. There is no time limit or operational parameter attached to the permission granted under this Condition. In fact, a review of EGLE's files reveals that this condition was included at the request of DRP's predecessor, ABB-RRS, specifically to allow the facility to optimize the management and dispatch of waste material during extended times when the power block is unavailable. *See* December 20, 1990 letter from Gary G. Pierce, ABB-RRS to Denis Armbruster, Supervisor, Permit Section, AQD attachment 2, page 2-3 Received (copy enclosed as Exhibit B). EGLE cannot unilaterally withdraw its permission simply because it failed anticipate every circumstance under which these activities might occur. So long as the ROP remains in effect and authorizes DRP to operate the Facility as an incinerator, DRP is also authorized to conduct the permitted transfer activities in the course of such operations. Nothing in the ROP, Consent Order APC No. 3-1991, or Part 115 suggests otherwise.

Based on the foregoing, DRP may continue to operate the Facility in accordance with the conditions in the ROP, including the transfer of solid waste, without any additional permits, licenses, or approvals under Part 115.

3. Paragraphs 3, 4 and 5 of the Notice contain allegations regarding the Facility's compliance with Rules 299.4507(2) (overnight storage of waste), 299.4507(13) (harborage and production of insects and rodents) and 299.4507(7) (litter) of the Part 115 administrative rules. Because the cited rules apply only to solid waste transfer facilities, they do not directly apply to DRP's operation of its incinerator Facility. Nonetheless, it is DRP's intent to conduct its transfer activities in substantive compliance with the transfer facility standards set forth in Part 5 of the Part 115 Rules. With this in mind, the following responds to each paragraph:

- Paragraph 3: DRP has eliminated the stockpiled solid waste in the MSW building and is currently clearing the floor of all solid waste at the end of each operating day.
- Paragraph 4: DRP has contracted with Terminex to maintain a robust rodent control program at the Facility. Further, because no waste remains on the MSW building floor overnight, that building no longer attracts rodents during periods of inactivity. DRP notes, however, that rodents are ubiquitous in the area surrounding the Facility and believes that a substantial majority of the rodents at the Facility have migrated from off-site locations.

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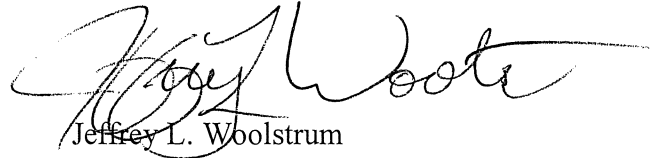
Mr. Greg Morrow
May 30, 2019
Page 4

- Paragraph 5: DRP has collected the litter outside of the buildings and continues to operate its sweeper as necessary to control dust.

Finally, in response to the two bulleted items in the Notice that EGLE did determine to be alleged violations, DRP is not aware of any odor issues since clearing the MSW building of stockpiled waste, and DRP continues to remove and dispose of any remaining accumulated waste material in other portions of the Facility.

Please call me with any questions regarding the foregoing

Very truly yours,
HONIGMAN MILLER SCHWARTZ AND COHN LLP



Jeffrey L. Woolstrum

Enclosures

Cc: Mr. Mark Fletcher, DRP
Mr. Patrick Cullen, WCDPS
Mr. Ron Brundidge, DPW
Mr. William Collins, DPW
Mr. Raymond Scott, DBSEED
Mr. Paul Max, DBSEED
Captain Horace Gary, DFD
Mr. John Prymack, GDRRA
Ms. Alexia Clark, EGLE
Ms. Rhonda Oyer, EGLE
Mr. Lonnie Lee, EGLE
Ms. Tracy Kecskemeti, EGLE
Ms. Wilhelmina McLemore, EGLE
Ms. Ann Vogen, EGLE