



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
LANSING

BROM STIBITZ
DIRECTOR

VIA E-MAIL ONLY

July 20, 2021

Mr. Joseph Scanlan
Department of Environment, Great Lakes and Energy
Air Quality Division
1504 West Washington Street
Marquette, Michigan 49855

Mr. Jason Wolf
Department of Environment, Great Lakes and Energy
Air Quality Division – Enforcement Unit
P.O. Box 30260
Lansing, Michigan 48909-7760

Re: Violation Notice, June 8, 2021, SRN: U482004292; U482100455; U482004285, U482003378,
Luce County – Buildings 3, 5, 39, 43; Zellar Property

Dear Sirs,

This letter is in response to the above referenced violation notice from EGLE-AQD dated June 8, 2021, issued to the Department of Technology Management and Budget (DTMB). DTMB requested and received from the EGLE-AQD a written approval for an extension to respond to that violation notice by July 20, 2021. The violation notice pertains to the Newberry Correctional Facility Various Buildings Demolition project (the "Project")

This response is divided into two main sections, namely a background section to provide a general overview relevant to and incorporated into the second main section, which is the response section that includes more details with respect to each individual violation identified in the above referenced violation notice.

Background

The Michigan Department of Corrections (MDOC) owns the buildings that are the subject of the violation notice. DTMB, and specifically the Design and Construction Division of the State Facilities Administration, is generally responsible for contracting for professional design services and construction and demolition services for the State.

DTMB had that responsibility with respect to MDOC and the Project, and all demolition activity on the Project occurred under contract.

As part of its responsibilities on the Project, DTMB solicited competitive bids for a professional services contract. In July 2019, DTMB awarded a contract (Contract Y19407) to Materials Testing Consultants, Inc. (MTC) to provide professional services for the State on the Project. MTC is a firm that provides construction materials testing and environmental engineering services. It also conducts surveying and sampling of suspected hazardous materials and sends the sample to an independent laboratory for evaluation and confirmation of results. DTMB needed this type of expertise for the Project, including to provide accurate information pertaining to Asbestos Containing Material (ACM) on the Project, which would guide demolition activities to ensure compliance with legal and regulatory requirements. Accordingly, DTMB contracted with MTC for its expertise, including with respect to demolition projects involving asbestos. MTC was DTMB's representative on the Project.

Under its contract with DTMB, MTC's duties include preparing bid documents for demolition bids for the Project. In that regard, DTMB provided MTC with an asbestos report DTMB had obtained in 2018 (supplemented in 2018 from a previous issuance). DTMB provided this report to MTC for informational purposes in June 2019 while the bid process was still underway, (before MTC was awarded its contract). Under its contract with DTMB, MTC was responsible for independently ensuring that all ACM on the Project is identified (including for purposes of preparing an accurate bid package for demolition contractors, as discussed below) and that suspected ACM is properly sampled and tested and overseeing proper abatement and disposal of ACM.

After DTMB awarded MTC its contract, MTC physically inspected facilities at the Project from November 2019 through February 2020 for purposes of developing bid documents for demolition work. MTC's preparation of the bid documents included providing a scope of work for demolition bidders to use to prepare their bids that includes ACM quantities for buildings 3, 5, 39, and 43 which are the subject of the violation notice referenced above, as well as ACM quantities for other buildings on the Project, which are the subject of a separate violation notice from EGLE to DTMB (also dated June 8, 2021) that DTMB is responding to under separate cover

During the design phase of its work, (while MTC was preparing the demolition bid documents) MTC requested a price increase under its contract with DTMB to conduct sampling beyond MTC's original proposal for sampling, or to conduct additional sampling beyond what it originally anticipated would be necessary. DTMB approved and paid MTC for that extra work. MTC did not specify in the demolition bid documents it had prepared that any of the buildings on the Project would be an "ordered demolition." DTMB relied on MTC's expertise to identify ACM quantities and properly prepare the bid package/scope of work for demolition contractors.

Bidders for the demolition work would use the information in the bid package MTC prepared, including the listed ACM quantities, to prepare their bids. Demolition bidders were also asked to

prepare a price sheet to lock in maximum (per unit) rates for additional asbestos abatement work that may be required in the event additional quantities of ACM were discovered as work was performed.

In July 2020, DTMB advertised the bid package for the demolition work on the Project, and MTC evaluated bid responses and recommended a bid award. Ten bidders submitted bids, and none asked questions during the bid process about the need for ordered demolitions; nor did they indicate in their respective bids that any ordered demolitions would occur. One of the questions submitted by bidders to MTC during the bid process was whether the 2018 asbestos report had been verified or reviewed; to which MTC responded that the report had been reviewed and that it was part of MTC's asbestos reports.

In August 2020, DTMB awarded the contract (Contract No. Y20388) to Bolle Contracting, LLC, (Bolle) for the demolition work on the Project through a competitive bid process using the bid package MTC prepared. Under its contract with DTMB, Bolle is responsible for ensuring that its demolition work, and specifically as it pertains to ACM, occurs according to all legal and regulatory requirements. In addition, Bolle is responsible under the contract, for recognizing suspected ACM during its work, including materials it uncovers that have not been sampled, and providing notice to MTC for sampling. These contractual obligations on contractors like Bolle are a failsafe designed to ensure that any ACM that may not have been identified by design professionals like MTC is identified during demolition and is properly addressed.

Thus, if additional quantities of ACM were discovered on the Project during demolition beyond what MTC indicated in the bid package, DTMB would expect Bolle to provide proper notice (to permit testing, and if positive for asbestos, ensure proper abatement and/or demolition) and to submit a request for a price increase under its contract with DTMB commensurate with the additional quantities of ACM beyond those MTC identified in the bid package; which price increases would be reviewed and approved (as appropriate) with the assistance of

Violation Responses

DTMB incorporates the information provided above as part of each of its responses below.

**Building 3 Cottage B (SRN U482100455); Building 5 Cottage D (SRN U482004285);
Building 39 Paint Shop (SRN U482003378); Building 43 Store House (SRN U482004292)**

Each of these violation notices indicate the following violations: Failure to thoroughly inspect; Failure to estimate the amount of RACM; Failure to remove RACM; Failure to adequately wet; Failure to deposit asbestos containing waste material as soon as practical; No signs during loading and unloading.

Buildings 3 and 39

Buildings 3 and 39 have not been abated or demolished. Thus, it is not clear why these buildings are included in the violation notice.

Buildings 5 and 43

1. Dates violations occurred:

- a. Failure to thoroughly inspect; Failure to estimate the amount of RACM: Failure to remove RACM

MTC inspected facilities at the Project from November 2019 through February 2020. On the basis of the information MTC provided in the bid package, including ACM quantities as to the buildings at issue, Bolle Contracting removed the RACM from these buildings between December 2020 until May 2021 (not continuously).

- b. Failure to adequately wet; Failure to deposit asbestos containing waste material as soon as practical; No signs during loading and unloading

Upon completion of abatement of buildings 5 and 43 between December 2020 to May 2021 Bolle moved what it believed was the salvageable material offsite to the Victory Way property for disposal/reuse. During the course of the work, Bolle advised DTMB that it had made arrangements to take recyclable concrete from the demolition process to a local property to hold for crushing. The contract documents encourage recycling of salvageable material and provide contractors such as Bolle rights to all salvageable materials from demolished buildings and associated structures.

2. Explain cause and duration of violations:

As seen by the results of EGLE's May 2021 sampling of waste piles at the Victory Way property, MTC initially failed to properly inspect and/or verify RACM quantities as it was required to under its contract with DTMB and Bolle failed to recognize RACM as it was performing demolition work as it is required to do under its contract with DTMB. MTC's failure to thoroughly inspect and estimate RACM was ongoing from the time MTC was obligated under its contract with DTMB to identify/confirm the presence or absence RACM on site until MTC inspected and took additional samples in these buildings, which occurred after the results of EGLE's May 26, 2021 sampling were available. MTC has obtained the results of its own additional sampling.

Bolle's failures to remove RACM, adequately wet, deposit asbestos containing waste material as soon as practical, to erect proper signage during loading and unloading, and transporting

unrecognized RACM to the offsite location were ongoing from the start of abatement until waste piles with RACM were removed from the off-site property at Victory Way, and properly disposed of that material at the Class II Dafter Landfill in early June, 2021, which DTMB understands is an appropriate landfill for RACM.

3. Are violations ongoing:

No.

4. Corrective actions taken:

As noted above, MTC collected samples on behalf of Bolle after EGLE's sampling. Following identification of impacted materials (RACM) as a subset of the larger quantity of materials poised for recycling at the Victory Way property, Bolle properly removed and properly disposed of the RACM at the Dafter Landfill in early June 2021. Please see also No. 2 above. The failures have been mitigated by corrective action and will not be repeated.

5. Corrective actions proposed:

Please see DTMB's responses to No. 4 and No. 6.

6. Steps to prevent reoccurrence:

After EGLE issued the Notice of Violation at issue, MTC indicated that it failed to thoroughly inspect for asbestos on the Project, and that it should have done its own proper inspection of the buildings. DTMB reminded MTC of its contractual obligations to ensure proper abatement work. DTMB has also reminded Bolle of its obligations under its contract with DTMB, and given the information it was provided, to recognize suspect materials during the work or uncovered during the work that have not been previously sampled, that it is required to have the professional (MTC) test them before removal and disposal.

In sum, DTMB has met, with MTC and Bolle as well as with MDOC to discuss the issues and a path forward. MTC completed a thorough inspection since the violation notices and provided Bolle with an updated scope of work for the Project. MTC and Bolle will ensure that remaining aspects of demolition work proceed in accordance with legal and regulatory requirements. MTC will verify and document abatement when completed. MTC has been reminded of its responsibility to be vigilant during oversight of demolition. Bolle has been reminded of its responsibility to be vigilant to ensure that demolition does not proceed past the point of

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removing any suspect previously untested materials. DTMB will monitor MTC and Bolle closely to assure compliance and to hold each party fully accountable for their individual and complimentary roles.

In addition, the impacted material at the Victory Way site was removed and disposed as required.

Conclusion

With this response, DTMB intends to demonstrate that DTMB has done and is doing everything it can to mitigate this situation and prevent a reoccurrence. DTMB intends to demonstrate that it acted reasonably by engaging a professional services firm and a demolition contractor, both with expertise and experience with asbestos work, under contracts that obligate each of them independently and in tandem, as it were, to ensure that situations like those that are the subject of the violation notice do not occur. DTMB further intends to demonstrate that it acted reasonably and properly when it became aware of issues related to the violations at issue and this it will continue to do so. If you have any further questions, please contact DTMB through the contact below. As additional information, if any, becomes available, it will be provided to you as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Tom Pawlowski". The signature is written in a cursive style with a small dot at the end.

Tom Pawlowski, P.E.
DTMB – Design and Construction Division
Project Director
517-242-0973