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J. CHRISTIAN HAUSER

October 6, 2023

VIA EMAIL ONLY
benyaj@michigan.gov

Mr. Jeffrey Benya
Senior Environmental Quality Analyst
Air Quality Division
Michigan Department of Environment
Great Lakes and Energy
3058 W. Grand Boulevard, Suite 2-300
Detroit, MI 48202

Re: Blue Star, Inc.
SRN/ID: U632301931 – Oakland County

Dear Mr. Benya:

Please be advised this office serves as legal counsel for Blue Star, Inc. (“Blue Star”). This letter supplements our client’s letter dated August 1, 2023 and is in response to Mr. Howe’s correspondence dated September 22, 2023.

As an initial proposition, Blue Star denies that it violated any of the sections identified in the Violation Notice dated July 11, 2023. To be clear, Blue Star is a demolition contractor and does not provide asbestos abatement services. In fact, for this particular project, Blue Star entered into a subcontract with Detroit Environmental Solutions, LLC (“DES”) to perform all environmental work on this job. On this basis alone we contend that the Violation Notice as it pertains to Blue Star should be rescinded.

Notwithstanding the above, you will recall from our meeting on September 20, 2023 that there was a significant amount of conflicting information as to whether or not the rope gasket in question was required to be removed prior to demolition. For example, while this material was identified on the survey, it was determined to be “non-friable.” Pursuant to 40 CFR 61.145(c)(1)(i), RACM need not be removed prior to the demolition “if it is Category I nonfriable ACM that is not in poor condition and is not friable.” There has been no evidence to suggest that the rope gasket in question in poor condition and was thus not required to be removed by DES prior to Blue Star performing its work.

During the bidding process, and before Blue Star was retained by the Owner, all interested parties participated in a post-bid meeting. At this meeting, Blue Star presented its

demolition plan to the Owner's consultant, Arch Environmental Group, Inc. ("Arch"). At this meeting, this specific issue was presented by our client and Arch raised no objections or concerns as to DES leaving the rope gasket in place. In fact, Arch subsequently recommended that the Owner contract directly with Blue Star to perform the demolition consistent with the demolition plan that was reviewed at this particular meeting. Furthermore, prior to actual work commencing at the site, the parties participated in a pre-construction meeting to review the demolition plan. Once again, the issue of the rope gasket was discussed and Arch confirmed that it was "non-friable" and that it did not need to be removed prior to demolition.

Work proceeded consistent with the demolition plan approved by Arch. DES performed its abatement work and Blue Star commenced demolition activities. On June 22, 2023, an inspection took place and RACM was identified in the demolition debris. The Department issued a Violation Notice on July 11, 2023. That Violation Notice referenced three citations: failure to remove RACM prior to demolition; failure to contain in leak tight container; and no generator labels.

Again, to be clear, Blue Star was not the environmental abatement contractor on this project. All abatement work was to be performed by DES. Any failure to remove, contain and label RACM was the sole and exclusive responsibility of DES, not Blue Star. Second, and equally as important, Blue Star's proposed work plan was discussed prior to work commencing and same was approved by Arch. Blue Star performed its work consistent with the work plan. If there was an issue with leaving the rope gasket in-place, then Arch, as the environmental engineer, should have raised an objection and indicated that the material required abatement prior to demolition. That never happened.

With respect to any efforts on the part of Blue Star to correct the cited violations, Blue Star reiterates its position stated at the September 20, 2023 meeting; to wit: Blue Star will never compromise on employee safety. It is relentless in its training, its education and its awareness when it comes to compliance with any and all regulations to protect its workers. This position is unwavering. Moving forward, Blue Star will err on the side of caution and require its abatement contractors remove rope gasket, regardless of whether it is deemed "non-friable" by the environmental engineer.

We trust this letter provides you with additional insight into this specific issue. Blue Star requests that the Department rescind the July 11, 2023 Violation Notice. However, if that is not decision the Department is willing to make at this time, at a minimum, Blue Star posits that there should be no further enforcement on this matter. Based on the information we discussed at our meeting on September 20, 2023, Blue Star is confident a similar issue will not be before this Department. Additionally, from the comments made at our meeting, it was clear that there was uncertainty on the part of all parties on how to handle this material. Blue Star would ask that the Department provide guidance moving forward so our client can make certain it is in full compliance with any and all environmental regulations.

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This letter does not constitute a complete or exhaustive statement of our client's contentions. Nothing stated herein is intended as, nor should be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Very truly yours,

FRASCO CAPONIGRO WINEMAN
SCHEIBLE HAUSER & LUTTMANN, PLLC

A handwritten signature in black ink, appearing to read "J. Christian Hauser", written in a cursive style.

J. Christian Hauser

JCH/jr

cc: Jason Wolf (via email only)
Client (via email only)