



October 6, 2023

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND E-MAIL: benyaj@michigan.gov

Mr. Jeffrey Benya, Senior Environmental Quality Analyst
Department of Environment, Great Lakes, and Energy
AQD Detroit District Office
3058 W. Grand Blvd., Suite 2-300
Detroit, MI 48202

Re: Project: Blanche Sims Elementary School Demolition
465 E. Jackson, Lake Orion, MI
SRN: U632301931, Oakland County

Dear Mr. Benya:

This is in response to Violation Notice U632301931 issued by EGLE dated July 11, 2023, which was re-issued by EGLE on September 22, 2023.

First, we would like to thank you for the opportunity to meet on September 20, 2023, to discuss what transpired on this project, and to provide this final and updated response to the violation notice that your agency re-issued. The meeting was very informative. We took what we learned and disseminated it through our organization to help everyone gain a better understanding of the NESHAP program, EGLE's role, and our role, should we undertake any responsibility with regard to asbestos remediation.

FRS is proud of our commitment to environmental safety for our clients and the public, and we are diligent in our efforts to improve best-practices and adhere to the requirements of NESHAP and EGLE. For our response to the violation notice, we have three topics we would like to focus on to satisfy all involved that this violation should be rescinded as it relates to Frank Rewold & Sons, Inc. ("FRS"). We also hope our response will shed some light that can be used to absolve some of the other entities involved with this project. Our response is organized as follows:

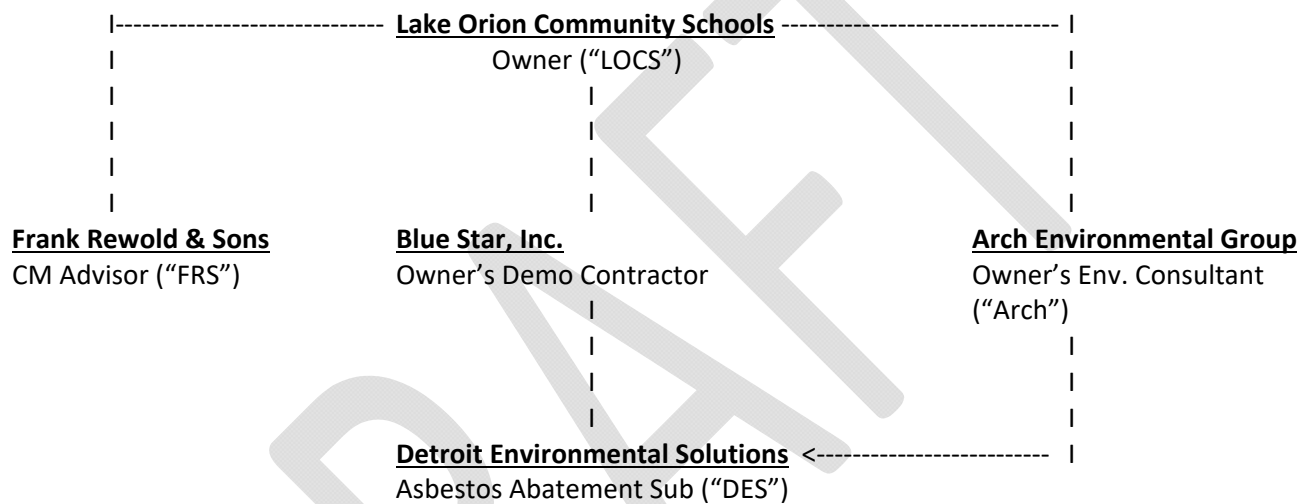
- A. FRS' contractual ties, obligations, and exclusions (which show that FRS had no contractual role in the supervision or performance of any abatement of hazardous materials, including asbestos).
- B. The owner's use of a separately hired environmental consultant as the project expert to design the asbestos abatement specifications and procedures, and to perform on-site



supervision and direction of the separately hired trade contractor’s abatement of hazardous materials, including asbestos.

- C. FRS’ due diligence and cooperation regarding the removal of hazardous materials by the owner’s separately hired environmental consultant and abatement contractor (in our role as the owner’s separate consultant for the overall non-asbestos construction process).
- D. Copies of the original response and subsequent responses.

A flow-chart showing the relationship of the parties on the project is as follows:



A. The Contracts with the Project Owner

1. The contractual ties of this project are as follows:
 - a. FRS has a direct contract with Lake Orion Community Schools (“LOCS”) to be the Construction Manager as **Advisor** only. FRS was not engaged to perform any physical work on the Project, and responsibility for abatement of hazardous materials (including asbestos) is expressly excluded from FRS’ contract.
 - b. Moreover, Arch Environmental Group, Inc. has a direct contract with Lake Orion Community Schools to be their environmental consultant, to protect LOCS against hazardous materials issues on the project, and to be the party with actual responsibility for on-site supervision of the asbestos abatement subcontractor.
 - c. Blue Star, Inc. has a direct contract with Lake Orion Community Schools as the demolition and abatement contractor.
 - d. Detroit Environmental Solutions LLC has a subcontract with Blue Star, Inc. to perform asbestos abatement.



- e. Blue Star and Detroit Environmental Solutions were directed in their on-site asbestos abatement work by Arch Environmental Group.
2. The FRS and Lake Orion Community School contract is attached. *(see Exhibit A)*
3. The specific section of the FRS contract that relates to the subject of this violation is Section 10.6 of the AIA C132-2009 (see attached), and it is copied below.

§ 10.6 Unless otherwise required in this Agreement, **the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances or regulated substances or wastes (collectively referred to as "Hazardous Materials")**, except as described in this Section. It is, however, acknowledged by the Construction Manager that the Owner has disclosed to it that the school buildings and facilities which are the subject of the construction management services to be provided by the Construction Manager may contain Hazardous Materials. It is further acknowledged that in implementing the construction Projects which may result from the Construction Manager's services, as herein defined, the removal or treatment of such Hazardous Materials may become necessary before any construction is commenced. The Construction manager shall not knowingly approve the use of any asbestos containing building material (ACBM) or any known hazardous building materials to be used in the construction of the Project. Upon the issuance of the Final Certificate for Payment, the Construction Manager shall require each Contractor to certify to the Owner, Architect and Construction Manager that no ACBM or any known hazardous building materials were used in the construction of the Project. The Owner will provide written documentation to the Construction Manager regarding any such Hazardous Material of which it is aware, that it discovers, or that is made known to the Owner. **As a Basic Service, the Construction Manager will coordinate services of Hazardous Materials consultant(s) and/or contractor(s) with all other individuals or entities involved in the Project in an effort to minimize to the extent practicable disruption in the Project work and schedule, but shall not be responsible for the performance of such consultant and/or contractor.** The Construction Manager shall be responsible to the Owner if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site, or generated during construction, or after it should have recognized such presence and general location, it exacerbates such contamination. **(Emphasis added.)**

Clearly, FMS had no contractual responsibility for any aspect of asbestos abatement as that function was expressly the responsibility of LOCS' separately hired environmental consultant (Arch Environmental Group) and abatement subcontractor (Detroit Environmental Solutions). This fact is not in dispute and is acknowledged by LOCS.

B. The Owner's Environmental Consultant and On-Site Asbestos Supervisor.

1. The owner's environmental consultant contracted directly with Lake Orion Community Schools.
2. During the duration of this project from the initial stages of design up to today, the environmental consultant has been the hazardous materials expert that LOCS, FRS, and all other parties have relied on.
3. The environmental consultant performed all testing, attended all meetings regarding hazardous materials, prepared bid specifications, attended all demolition and abatement bid and bidder meetings, including the post bid meetings.
4. The environmental consultant participated in the decision-making process for the award of the demolition / abatement contract.
5. The environmental consultant participated in all preconstruction meetings.
6. The environmental consultant was on site every day of the abatement and demolition work.
7. The environmental consultant was responsible for on-site supervision of the abatement subcontractor, directing asbestos abatement activities, and providing direction on all site activities throughout the abatement and demolition work.
8. The environmental consultant was aware of the partial order demolition proposed by the demolition contractor (Blue Star, Inc.) at the time of the post bids and agreed to that demolition contractor being awarded the abatement and demolition contract.
9. The environmental consultant was at the preconstruction meeting where Blue Star's proposed partial order demolition was discussed. The environmental consultant never raised any objection to Blue Star or the partial order demolition, and the environmental consultant agreed that Blue Star be awarded the contract for said work.
10. The environmental consultant performed testing during the negative pressure abatement of numerous materials within the building before structural demolition began.
11. The environmental consultant gave an "all clear" after the negative pressure abatement was completed prior to any structural demolition being started in those areas.
12. The environmental consultant never said the roping / gasket material in question needed to be removed before they gave the all clear to start demolition.
13. The environmental consultant was on site during the partial order demolition and never once said there was an issue or requested that the demolition should stop. To the contrary, the environmental consultant provided actual on-site supervision of the abatement subcontractor's work, and upon information and belief, directed the abatement subcontractor's means and methods as to the rope / gasket material, including directing that

the rope / gasket material was to remain in place during the abatement due to safety concerns regarding loosening the tectum deck panels in their frames if the gasket were to be removed. Importantly, FRS had no authority or professional licensure to question the directives of the owner's environmental consultant.

14. Based upon our meeting on September 20th, we realize that the environmental consultant was not cited in the violation notice for the actions of what is done with the NESHAP survey. However, in this case they were also directly involved in supervising the abatement work and a part of the demolition work. We understand that under the NESHAP regulations, the definition of "owner or operator" is any person who owns, leases, operates, controls, or supervises the demolition operation, and we respectfully submit that the environmental consultant (not FRS) meets that definition with respect to the asbestos abatement on this project. Moreover, we are astonished by the fact that while FRS was expressly not-responsible for asbestos abatement (and yet is a subject of the violation notice), the environmental consultant was entirely responsible for both the design and on-site supervision of the abatement and yet it is not a subject of the violation notice.
15. It is also understood from the meeting on September 20th that the project owner, FRS, and the other contractors cannot necessarily rely on the owner's environmental consultant to be the project expert, and thus all other parties are effectively required to be the experts. However, FRS is not an environmental expert, we need to be able to rely on the party that the owner hired to be the expert, and we believe this is not practical nor a generally acceptable rationale for what an expert is and what they can be relied on for.

C. FRS' Due Diligence and Proper Performance as CM-Advisor to the Owner.

1. FRS worked diligently with Lake Orion Community Schools and the environmental consultant throughout the entire project.
2. FRS never proceeded with any activity that had any relation to hazardous materials without directly involving the environmental consultant and abiding by their approvals and directives.
3. FRS put the original demolition project out for bids in February of 2022. Upon receiving those bids, we realized there were issues that needed to be worked out with the hazardous materials, so the bids were thrown out and the project was to be re-bid. (*see Exhibit B*)
4. Prior to a second round of bidding, we coordinated with the environmental consultant and EGLE for a site visit to discuss bidding and construction needs. (*see Exhibit C*)
5. After this meeting, the environmental consultant performed additional invasive testing on the project to confirm and quantify some areas of concern to it.
6. After the additional testing, we again asked the environmental consultant what was needed for the roping / gasket material and to have a meeting to coordinate. The response from

the environmental consultant was they were working on it with EGLE but had no answers at that time. *(see Exhibit D)*

7. Also, at this time Lake Orion Community Schools and FRS discussed the need to shorten the length of time for the demolition of the building based on what was learned in the first round of bids.
8. Due to the time constraints, a decision was made, again in conjunction with the environmental consultant, that the demolition and abatement would be performed under one trade contract with the LOCS. This would place all schedule requirements under one trade contract to eliminate potential delays and gaps in work-scope. In theory, it would also create efficiency and shorten the time needed for demolition because the one demo contractor had to coordinate the entire project themselves and not rely on third party coordination.
9. The environmental consultant then prepared a bid document for the abatement work that was then modified for bidding instructions and combined with our project manual to obtain bids. *(See Exhibit E)*
10. It should also be noted here that the environmental consultant's NESHAP survey states the roping / gasket is "non-friable" (and thus not considered RACM), but later an RFI was requested and answered stating to "consider" the roping / gasket material as friable. *(which obviously conflicts with the NESHAP survey, see Exhibit F and Exhibit G)* Regardless, these issues and conflicts are between the environmental consultant, the demolition trade contractor, and the abatement subcontractor (not with FRS because all such work is expressly excluded from our contract).
11. The bids were received and shared with Lake Orion Community Schools and the environmental consultant. *(see exhibit H)*
12. After initial phone conversations, the low bidder was deemed an unacceptable bid, and interviews were held with the next two low bidders.
13. All members of the team, including the environmental consultant, were at these post bid interviews.
14. Although the project specifications stated that the roping/gasket in the roof panels was to be removed under negative pressure, both low bidders qualified their bid that the roping/gasket was not going to be removed under negative pressure, but it was to be removed with the building as part of a partial order demolition. *(see Exhibit I)*
15. At this time, it was discussed with the team what was the best way to move forward, either talk to the next bidders that were approximately \$250,000 to \$300,000 higher or move forward with the best of the low bids knowing they were using partial order demolition. All team members, including the environmental consultant, said to move forward. The environmental consultant was responsible for the design and on-site supervision of the abatement work, they were directly involved with the pre-bid and post-bid meetings, and

they approved LOCS contracting with Blue Star as the demo trade contract. The environmental consultant was the project expert for abatement, and if they had any issue with the manner in which the rope / gasket was to be handled, they should have said no, it cannot be done this way. But they did not; instead, they approved going forward with Blue Star, so from this point forward we acted in good faith that the expert was the expert, and we could move forward with the partial order demolition.

16. Prior to work beginning in the field, a preconstruction meeting was held with all team members including the environmental consultant. At this meeting, the fact that partial order demolition was to be utilized to remove the roping / gasket in the roof panels was again discussed. And again, the environmental consultant did not say this was a problem. Everyone was aware, and all parties were to move forward.
17. Work was begun on site on June 12, 2023 and the first order of business was to abate certain materials that had to be removed under negative pressure.
18. These regulated asbestos containing materials were removed under the actual on-site supervision and direction of the environmental consultant who met directly with the abatement subcontractor, and upon information and belief, approved and directed their work.
19. Once these asbestos containing materials were removed (which did not include the roping / gasket material in the roof panels), the environmental consultant observed, inspected, and accepted the abatement work and gave the all-clear approval to begin building demolition. Again, there was nothing to lead us or make us believe that anything was being done incorrectly. To the contrary, the environmental consultant's on-site activities served to assure all parties that the work was being properly performed.
20. The building demolition began within the areas in question and continued for 3 days without the environmental consultant stating there was any problem even though they were on site to supervise the work the entire time.
21. It was not until the state made their site visit that the issue of removing the roping / gasket material became a known problem.
22. After the state visit, the demolition work ceased, and after a few days of communication, it was decided that demolition could continue as it was started. (*see Exhibit J*)
23. It is not FRS' position to say that anyone did anything wrong. The environmental consultant prepared its design, performed its on-site supervision, and directed Blue Star and DES based on its professional judgment, and FRS has no authority or expertise to question those decisions. At the same time, it is fundamentally inequitable to hold FRS liable for the expert decisions of others over whom we have no control. We believe that we did everything in our power and within our authority as CM-Advisor to coordinate with the owner's separately hired environmental consultant and abatement subcontractor. We facilitated the communication of information, asked questions, brought issues to the table, and worked with the environmental consultant, the owner's hired expert, to make sure



everything was done correctly in accordance with their directives. Asbestos abatement was the responsibility of the environmental consultant, Blue Star, and DES, and all such work was expressly excluded from FRS' contract. We operated on the reasonable standard of belief that we could rely on the environmental expert.

D. Previous Responses for your reference:

1. FRS original response (*see Exhibit K*)
2. FRS follow up response (*see Exhibit L*)
3. FRS email follow-up (*see Exhibit M*)

E. Conclusion and Request for Relief.

We respectfully submit that the July 11, 2023 violation notice should be withdrawn/rescinded, particularly as to FRS (and the Lake Orion Consolidated Schools). For example, the violation notice is predicated on the faulty premise that FRS was “overseeing” the asbestos abatement, when in fact, that work was excluded from our contract and was the sole purview of the owner’s environmental consultant and the abatement subcontractor. In other words, to the extent any party was the owner-operator as to the asbestos abatement work, it would have been the environmental consultant, not FRS. In addition, all parties worked in good faith to meet with and comply with EGLE’s requirements. And there was good-faith confusion by all parties as to whether the rope / gasket was ACM because the NESHAP survey expressly states that it is non-friable, and the environmental consultant subsequently approved contracting with Blue Star knowing that its plan for abatement did not including abatement of the rope / gasket. Moreover, the environmental consultant reiterated its approval of the abatement methods when, upon information and belief, it gave on-site directions to DES to refrain from removing the rope / gasket during the negative pressure abatement work. Finally, subsequent to the site visit by EGLE, all parties have initiated the actions necessary to correct the issues raised in the violation notice, and the abatement and the other demolition is now complete.

Although FRS is not an environmental expert and was not responsible for asbestos abatement on this project, FRS is strongly committed to environmental safety, and we have learned a great deal from our September 20th meeting and our other communications with EGLE. To the extent EGLE does not believe that the owner’s environmental expert or the abatement subcontractor performed as EGLE desires, we respectfully request guidance from the Department so that all parties can improve best-practices for future work. We will continue to work to communicate effectively with EGLE, and we are appreciative of the good information that EGLE provided at our September 20th meeting. FRS believes that at all times it acted in good faith in cooperation with the owner’s environmental expert and EGLE, and that FRS did not violate any law or regulation, especially since we were not contractually responsible for any aspect of the asbestos abatement.



Nothing in this response is a waiver of any right, claim, or defense of FRS, all of which are expressly reserved.

We look forward to resolving this matter.

Sincerely,

Mike Gagnon
Vice President

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FRANK REWOLD & SONS

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