

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY  
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings  
against **Berne Enterprises, Inc.**, a  
corporation, organized under the laws of the  
State of Michigan and doing business at  
7190 Berne Road in the City of Pigeon,  
County of Huron, State of Michigan

AQD No. 2019-10

SRN: A1453

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STIPULATION FOR ENTRY OF FINAL ORDER  
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) against Berne Enterprises, Inc. (Company), a corporation organized under the laws of the State of Michigan and doing business at 7190 Berne Road, City of Pigeon, County of Huron, State of Michigan, with State Registration Number (SRN) A1453 (Facility). EGLE alleges that the Company is in violation of the following: the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Iron and Steel Foundries Area Sources, 40 CFR Part 63, Subpart ZZZZZ; Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, MCL 324.5501 *et seq.*; and Rule 201 and Rule 910 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1201 and R 336.1910. Specifically, EGLE alleges that the Company violated these requirements as follows: failed to submit semi-annual compliance reports; failed to keep records for Hazardous Air Pollutants (HAPs); failed to maintain a site-specific scrap metal management program; installed and operated four induction furnaces and four heat treat furnaces without obtaining a Permit to Install (PTI); and failed to properly operate the baghouse associated with heat treat furnaces, as cited herein and in the Violation Notice dated June 18, 2018. The Company and EGLE stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and EGLE stipulate as follows:

1. The Natural Resources and Environmental Protection Act (NREPA) MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in this State.

2. Article II, Pollution Control, Part 55 of the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.

3. EGLE was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2019-06 and has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.

4. The EGLE Director has delegated authority to the Director of the AQD (AQD Director) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55, MCL 324.5528, is proper and acceptable.

6. The Company and EGLE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Company that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Director.

8. The Company shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

#### COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

##### Permit

9. A. Within fourteen (14) days of the effective date of this Consent Order, the Company shall submit to the AQD an administratively complete application for a PTI for the induction furnaces and the heat treat furnaces.

9. B. Upon issuance of the PTI and any subsequent permit revisions, it shall be incorporated by reference into this Consent Order, made an enforceable part of this Consent Order and the Company shall comply with all terms and conditions of the PTI.

##### Recordkeeping, Reporting, and Operating Conditions

10. A. On and after the effective date of this Consent Order, the Company shall comply with all recordkeeping and reporting requirements as required by 40 CFR Part 63, Subpart ZZZZZ.

10. B. On and after the effective date of this Consent Order, the Company shall operate and maintain a site-specific scrap metal program as required by 40 CFR Part 63, Subpart ZZZZZ.

10. C. On and after the effective date of this Consent Order, the Company shall operate the baghouse associated with heat treat furnaces in accordance with Rule 910.

#### GENERAL PROVISIONS

11. On and after the effective date of this Consent Order, except as otherwise provided by the administrative rules of Part 55, the Company shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment including control equipment pertaining thereto, which may emit an air contaminant, unless a permit to install which authorizes such action is issued by EGLE pursuant to Rule 201, the Company is issued a waiver pursuant to Rule 202 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1202, or the change is exempt from the requirements of Rule 201.

12. This Consent Order in no way affects the Company's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Part 55, or their rules and regulations, or to the State Implementation Plan.

13. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

14. The Company shall pay to the General Fund of the State of Michigan, in the form of checks made payable to the "State of Michigan" and mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$49,728.00, which includes AQD costs for investigation and enforcement. The total sum of \$49,728.00 shall be made in two (2) payments as follows: a payment of \$24,864.00 shall be paid within thirty (30) days after the effective date of this Consent Order; a second payment of \$24,864.00 shall be paid within one-hundred twenty (120) days after the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40214" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

15. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 11 of this Consent Order, the Company is subject to a stipulated fine of up to

\$10,000.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with paragraphs 9.A or 10 of this Consent Order, the Company is subject to stipulated fines of up to \$2,500.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 9.B of this Consent Order, the Company is subject to a stipulated fine of up to \$1,000.00 per violation per day. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of EGLE. Stipulated fines submitted under this Consent Order shall be by check, payable to the State of Michigan within thirty (30) days after written demand and shall be mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40214-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way the Company's obligation to comply with the terms and conditions of this Consent Order.

16. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or EGLE administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

17. To ensure timely payment of the settlement amount assessed in paragraph 14 and any stipulated fines assessed pursuant to paragraph 15 of this Consent Order, the Company shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest penalty shall be determined at a rate of twelve percent (12%) per year compounded annually, using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by the Company shall be made to the State of Michigan in accordance with paragraph 14 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by the Company before any remaining balance is applied to subsequent payment amount or interest penalty.

18. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 15 of this Consent Order but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by EGLE of stipulated fines is

made. In addition, the Company agrees that said fines have not been assessed by EGLE pursuant to Section 5529 of Part 55, MCL 324.5529, and therefore are not reviewable under Section 5529 of Part 55.

19. This compliance program is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55, MCL 324.5538.

20. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, this Consent Order shall terminate only upon written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, the Company shall submit a request, to the AQD Director at the Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Company has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Saginaw Bay District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and, (iv) such information as may be requested by the AQD Director.

21. In the event Berne Enterprises sells or transfers the Facility it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, the Company shall also notify the AQD Saginaw Bay District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, Berne Enterprises must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the AQD Saginaw Bay District Supervisor within thirty (30) days after assuming the obligations of this Consent Order.

22. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, MCL 324.5511 and MCL 324.5528(3), the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

23. Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of the NREPA,

MCL 324.1701 *et seq.*, and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

24. The Company hereby stipulates that entry of this Consent Order is a result of an action by EGLE to resolve alleged violations of its facility located at 7190 Berne Road, City of Pigeon, County of Huron, State of Michigan. The Company further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Company files for bankruptcy in the future. The Company will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Company will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Company, during and after any future bankruptcy proceedings, will ensure that the settlement amount and any future stipulated fines remain an obligation to be paid in full by the Company to the extent allowed by applicable bankruptcy law.

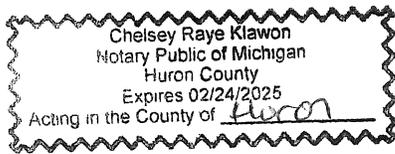
The undersigned certifies that he/she is fully authorized by the Company to enter into this Consent Order and to execute and legally bind the Company to it.

**BERNE ENTERPRISES**

Keith W. Wurst Owner  
Print Name and Title

Keith W. Wurst 5-23-19  
Signature Date

Subscribed and sworn to by the above signatory before me on this 23 day of May 2019.



Chelsey Raye Klawon  
Notary Public Signature  
Chelsey Raye Klawon  
Notary Public Printed Name  
02/24/2025  
My Commission Expires

Approved as to Content:

Approved as to Form:

Mary Ann Dolehanty  
Mary Ann Dolehanty, Director  
AIR QUALITY DIVISION  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES,  
AND ENERGY

Neil Gordon  
Neil Gordon, Section Head  
ENVIRONMENTAL REGULATION SECTION  
ENVIRONMENT, NATURAL RESOURCES,  
AND AGRICULTURE DIVISION  
DEPARTMENT OF ATTORNEY GENERAL

Dated: 5/30/19

Dated: 5/29/2019

FINAL ORDER

The Director of the Air Quality Division having had opportunity to review this Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environment, Great Lakes, and Energy pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that this Consent Order is approved and shall be entered in the record of EGLE as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

  
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Mary Ann Dolehanty, Director  
Air Quality Division

Effective Date: 5/30/19