

# VARNUM ATTORNEYS AT LAW

Bridgewater Place | Post Office Box 352  
Grand Rapids, Michigan 49501-0352

Telephone 616 / 336-6000 | Fax 616 / 336-7000 | www.varnumlaw.com

Matthew B. Eugster

Direct: 616 / 336-6821  
mbeugster@varnumlaw.com

January 6, 2020

**VIA E-MAIL: KOVALCHICKM@michigan.gov**  
**and FIRST CLASS MAIL**

RECEIVED  
MDEQ - JACKSON

JAN 6 2020

AIR QUALITY DIVISION

Mr. Mike Kovalchick  
Senior Environmental Engineer  
Michigan Department of Environmental Quality  
301 East Louis B. Glick Highway  
Jackson, MI 49201

Dear Mr. Kovalchik:

Re: Response to EGLE December 9, 2019 Violation Notice to Arbor Hills Energy

I am writing on behalf of Arbor Hills Energy LLC ("AHE" or the "Company") in response to the December 9, 2019 Violation Notice (the "Violation Notice") that you issued on behalf of the Michigan Department of Environment, Great Lakes and Energy ("EGLE"). In the Violation Notice you requested that AHE provide a written response by January 6, 2020. Therefore, AHE provides the following response:

- (1) As noted in the Violation Notice, each of the alleged violations were cited in previous violation notices. Therefore, AHE references and incorporates herein each of its prior responses to those past violation notices.
- (2) The alleged violations referenced in the Violation Notice relate to emission sources that are the subject of a pending Permit-to-Install ("PTI") application. As it would appear that many of the alleged violations cannot be resolved to the satisfaction of EGLE without the issuance of a PTI, AHE references and incorporates herein its PTI application materials (Tracking Number 2019-22), which are already in the possession and control of EGLE. AHE has repeatedly requested the issuance of a PTI to address unresolved permitting concerns. AHE is continuing to work with Air Quality Division ("AQD") permit staff to process the pending PTI application referenced above. Furthermore, AHE believes that AQD permit staff will confirm that the Company has cooperated and is continuing to cooperate with EGLE to process the pending PTI application.
- (3) EGLE has previously informed AHE of pending administrative enforcement to resolve the alleged violations. Although AHE disputes many of the alleged

# VARNUM

ATTORNEYS AT LAW

Mr. Mike Kovalchick

January 6, 2020

Page 2

violations, the Company has cooperated with EGLE enforcement officials and remains willing to discuss resolution of the alleged violations. AHE further believes that enforcement staff will confirm that AHE has previously indicated its willingness to resolve all unresolved compliance issues.

Having addressed the alleged violations set forth in the Violation Notice (above), AHE remains confused about the purpose of the November 14, 2019 inspection referenced in the Violation Notice. As discussed above, each of the alleged violations relates to matters identified during previous inspections, and which were cited in previous violation notices issued by EGLE staff. While AHE has and will continue to cooperate with EGLE to demonstrate compliance with all applicable regulations, we feel it necessary to express our concerns regarding the process and procedures for inspections at the AHE facility.

As you are no doubt aware, EGLE has the authority to conduct inspections pursuant to MCL 324.5526. However, Part 55 also requires the agency to take steps to notify the regulated party of the purpose of the inspection, as discussed in MCL 324.5526(1), which provides as follows:

*(1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.*

Furthermore, notwithstanding the provisions of Part 55 (discussed above), Part 15 of the Michigan Natural Resources and Environmental Protection Act ("NREPA") imposes additional requirements on the agency when conducting any inspections. See MCL 324.1505. By way of example, MCL 324.1505(4) provides as follows:

*(4) Before conducting an inspection under this act, the department shall provide the person whose operation or facility will be inspected with both of the following:*

*(a) An explanation of the person's rights and responsibilities with respect to the inspection.*

*(b) The reasons for conducting the inspection.*

Additionally, MCL 324.1505(5) provides as follows:

**VARNUM**  
ATTORNEYS AT LAW

Mr. Mike Kovalchick  
January 6, 2020  
Page 3

*(5) After conducting an inspection under this act, the department shall give the person whose operation or facility was inspected an opportunity to provide comments to the department on the quality of the inspection and the professionalism of the inspector.*

Based on discussions with AHE staff, it does not appear that AQD district staff has attempted to comply with all of the processes and procedures outlined above during recent inspections (including the November 14, 2019 inspection referenced in the Violation Notice). Therefore, AHE respectfully requests that AQD District Staff comply with all procedural requirements of MCL 324.5526 and MCL 324.1505 during future inspections.

Thank you for your assistance in this matter. Please do not hesitate to contact me to discuss any questions, comments or concerns you may have regarding this matter.

Very truly yours,

**VARNUM**



Matthew B. Eugster