

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

June 16, 2023

Robert Charles Davis
10 S. Mail St., Ste. 401
Mt. Clemens, MI 48043

Re: *Michigan Department of Environment, Great Lakes, and Energy v
Fricia Enterprises, Inc. d/b/a Industrial Metal Coating Company*
Ingham County Circuit Court File No. 21-000095-CE

Dear Mr. Davis:

This is the Michigan Department of Environment, Great Lakes, and Energy's (EGLE) response to your letter dated June 5, 2023. In it, you protest a Violation Notice issued to Industrial Metal Coating (IMC) as a result of an investigation conducted on May 25, 2023, confirming a Rule 901 violation. This is the fourth confirmed Rule 901 violation since the Consent Judgment was issued. Violation Notices were issued on October 14, 2022; March 21, 2023; April 21, 2023; and June 1, 2023. The stipulated penalty of \$7,000 for two violations was due on June 12, 2023. To date, EGLE has not received payment. Furthermore, EGLE is issuing a stipulated penalty of \$3,500 for the confirmed Rule 901 violation reflected in the June 1, 2023 Violation Notice in accordance with the provisions of Paragraph 11.2 of the Consent Judgment, due by July 17, 2023.

Required Remedial Action Plan

Furthermore, the two Violation Notices issued on March 21, 2023 and April 21, 2023, occurred within 60 calendar days and under Section 5.7(G) of the Consent Judgment, required you to submit a Remedial Action Plan by June 5, 2023, which includes "hiring a consultant to review the ongoing odor sources and necessary remedial actions to comply with Rule 901," as well as "creating a timely implementation schedule for the remedial actions identified." There is no dispute resolution regarding this requirement as it is specifically excluded from the dispute resolution process. See Consent Judgment, Section 7.1. Your June 5, 2023 letter fails to present a Remedial Action Plan. Finally, even if you consider your June 5, 2023 letter a Remedial Action Plan, it is insufficient under Section 5.7(C) and 5.7(G) of the Consent Judgment. There is no evidence that IMC hired the consultant whose resume was attached and there was no implementation schedule included in the plan. In fact, this was the first EGLE has heard of any consultant, despite the

reference in your letter to the “previously disclosed expert.” See June 5, 2023 letter to EGLE. As such, IMC must submit a Remedial Action Plan immediately, or be subject to further stipulated damages.

Insufficient Violation Notice Responses

In addition, IMC’s responses to the Violation Notices were insufficient because nuisance odors from your facility continue to be verified by EGLE in violation of Rule 901. While IMC told EGLE about wanting to increase the stacks and the fan power, any measures it has taken have proved to be unsuccessful. Despite the purpose of the Consent Judgment “to assist both IMC and EGLE in investigating and identifying the underlying conditions at the Facility that may lead to nuisance odors,” IMC continues to deny it has any odor issues emanating from its building, thus thwarting the intent of this judgment. See Consent Judgment, Section 5.7(A). After receiving the Violation Notices, IMC was supposed to investigate the cause of the violation and “utilize a checklist of suspected causes of odorous conditions” and “submit to EGLE a Report identifying its corrective action to resolve the alleged violation.” Consent Judgment, Section 5.7(C). It has failed to identify corrective actions to resolve these violations.

The June 5, 2023 letter responding to the Violation Notice issued on May 25, 2023 was inadequate. IMC claims that the business was shut down when EGLE staff arrived so the violation “is based on impossible and inaccurate facts.” As EGLE previously told you in its May 12, 2023 letter, “a complete shutdown of operations does not immediately prevent nor stop odors originating from the facility from traveling into the surrounding atmosphere—as air dispersion continues until complete dissipation has occurred.” Letter to IMC, May 12, 2023, p 2. This is particularly true when bay doors surrounding the building are open, allowing odors to escape to the surrounding properties. You also allege that IMC staff communicated with other nearby business owners and residential homeowners and have confirmed that odors are not an issue, yet there is no evidence in support of this statement. In fact, contrary to your assertion that all complaints originate from Progressive Insurance, there have been several other repeated complainants who have reported the noxious odors emanating from IMC that interfere with their enjoyment of their property. Because IMC’s response to the Violation Notice issued on May 25, 2023 was inadequate, per Section 6.4 of the Consent Judgment, it has 30 days to resubmit a response that is due on July 17, 2023.

EGLE is presuming that your June 5, 2023 letter, including your prior responses to the Violation Notices, is a “written Notice of Dispute” under Section 7.2 of the Consent Judgment. Because you are attempting to invoke the informal dispute resolution process, this letter is EGLE’s official “written statement of its position” pursuant to the Consent Judgment, Section 7.2.

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In summary, EGLE continues its demand of the past due \$7,000 stipulated penalty. Further, because of the additional established Rule 901 violation identified in the June 1, 2023 Violation Notice, EGLE is demanding a stipulated penalty of \$3,500 as required by paragraph 11.1(b) of the Consent Judgment for a total payment of \$10,500. To ensure proper credit, all payments shall include the Payment Identification Number AQD40289-S on the face of the check. Stipulated fines submitted under this Consent Judgment should be made by check, 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.

Additionally, the responses to the Violation Notices were inadequate and no Remedial Action Plan was submitted pursuant to the Consent Judgment.

Sincerely,

/s/ Jennifer Rosa

Jennifer Rosa (P58226)

Assistant Attorney General

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