



Warner Norcross + Judd LLP

October 9, 2023

Via E-Mail and U.S. Mail

Mr. Dan McGeen
EGLE-Air Quality Division
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RE: RJ Industrial Recycling - Response September 18, 2023 Violation Notice

Mr. McGeen:

On behalf of RJ Industrial Recycling (“RJ”), this letter timely responds to AQD’s September 18, 2023 Violation Notice (“VN”) concerning RJ’s recycling facility at G-5167 N. Dort Highway in Flint, Michigan. As you know, the VN alleged “excessive visible emissions” that “indicated that the air-cleaning device was not being properly operated” and “did not reflect best management practices.” This letter shares several concerns about the VN allegations—including the factual and technical assertions as well as the legal conclusions—before discussing the fact that RJ anticipates installing a new emission control system in the coming months.

Beginning with RJ’s concerns, I note the following issues with the VN allegations:

- On August 30, 2023, during your visit to the RJ facility, it was a cloudy day with precipitation and variable winds (e.g., with changing directions and gusts above 20 mph); together, this served to limit the overall visibility and impair the ability to accurately measure opacity/visible emissions (“VEs”).
- The VN alleges opacity levels of 80%, 90%, 100%, and 35%, but without providing any documentation of Method 9 or equivalent opacity readings. Absent documentation, which is generally required to support an allegation of excess opacity or VEs, it is difficult for RJ to evaluate the VN allegations, including the underlying claims about opacity.
- It remains unclear if the VN’s alleged opacity levels were from a single source or involved multiple sources, which would conflict with the instructions for taking a valid opacity reading under Method 9. For example, if one approached the RJ torching area from Dort Highway, one could easily conflate the emission impacts from the “open” face of the torching enclosure (facing west), the exhaust on the south of the enclosure, the exhaust on the north side of the enclosure, the bottom edges of the enclosure, and any potential leaks from the associated piping. Similarly, different parts of the VN describe smoke that was gray, brown, and tan.



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- While a recent shift of the wind direction that morning resulted in an adjustment to the positioning of the water-spray equipment near the exhaust out the south side of the enclosure, it is also possible that the water spray for that exhaust may have interfered with opacity readings in that area, especially given the windy conditions.

Given that the VN's alleged opacity levels are inconsistent with the observations of RJ representatives that were also onsite during the site inspection, RJ suspects some of these issues impacted AQD's observations during the site inspection.

When combined with the lack of documentation in the form of a Method 9 observation record (i.e., the reading worksheet), RJ believes that the underlying facts and circumstances undermine the legal basis for alleging violations of an opacity standard. This presumably explains why AQD did not allege a violation of applicable opacity standards in the Part 3 rules of the Michigan SIP.

Despite RJ's concerns with the VN's allegations, RJ remains committed to improving the torching operations. This commitment is embodied in the terms of the near-final Consent Decree that was negotiated with state and federal officials, which requires the installation of a new emission capture and control system at the facility. Implementation of that system is anticipated next year.

In the interim, RJ has reviewed with staff the site procedures for staging bulk scrap inside the enclosure and adjusting the water mister when weather conditions change. RJ has also acquired an additional water mister for use as needed.

As always, please contact me with any questions or concerns.

Thanks,

A handwritten signature in blue ink, appearing to read 'Kurt Kissling'.

Kurt Kissling
Warner Norcross + Judd LLP
Outside Legal Counsel for RJ Industrial Recycling

C: Jenine Camilleri, AQD-Enforcement (CamilleriJ@michigan.gov)
Jason Roughton, RJ
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