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**DEQ-AQD**

**DEC 09 2019**

**SAGINAW BAY**

December 6, 2019

Mr. Matthew R. Karl  
Environmental Quality Analyst  
EGLE, AQD Bay City District Office  
401 Ketchum St., Suite B  
Bay City, MI 48708

**RE: PRELIMINARY RESPONSE OF RJ INDUSTRIAL RECYCLING TO OCTOBER 29, 2019 ALLEGED VIOLATION NOTICE LETTER; SRN: B1993, SAGINAW COUNTY**

Dear Mr. Karl:

We are writing on behalf of and as legal counsel for RJ Industrial Recycling ("RJI") and are furnishing the following information and progress report to you on behalf of our clients in response to your October 29, 2019 letter addressed to both AP-Sag LLC (AP-Sag) and RJI. We note that a similar Violation Notice letter was sent by you on behalf of EGLE to both AP-Sag and Messaros Inc., the demolition contractor at the site for more than a year who conducted most of the demolition and site disturbance before being fired by AP-Sag and replaced by RJI.

Your letter alleges that on October 21, 2019, the date of your inspection, your staff observed violations of Title 40 of the Code of Federal Regulations (CFR) at the former TRW Integrated Chassis Systems (TRW) facility located at 2328 East Genesee Avenue, Saginaw, Michigan. While our client does not concede that it has violated any of the requirements of the Title 40 of the Code of Federal Regulations, Part 61, National Emission Standards for Hazardous Air pollutants (NESHAP), Subpart M and Rule 942 of the Administrative Rules promulgated under Part 55, Air Pollution Control of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, RJI is committed to cooperating with EGLE in resolving the issues raised by it.

Our client has and will continue to cooperate with EGLE, and appreciates your continuing assistance as it addresses the matters raised in your letter.

You asked in your letter that AP-Sag and RJI initiate actions necessary to correct the cited alleged violations and submit a signed written response to the alleged Violation Notice by November 19, 2019 providing the following information: the dates that the alleged violations occurred; an explanation of the causes and duration of the alleged violations; whether the alleged violations are ongoing; summarize the actions taken and which are proposed to be taken to correct the alleged violations; the dates by which

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these actions will take place; and to identify the steps being taken to prevent recurrence of the alleged violations.

A Freedom of Information Act request seeking, among other things, documents concerning the site and EGLE's investigations from August 2018 to the present, was submitted to EGLE in order for RJI to respond to the alleged Violation Notice. On November 12, 2019, we received a site file from the Remediation and Redevelopment Division (RRD) of the Bay City District Office of EGLE as part of the FOIA production which contained documents from 1991-1994. Then on November 13, 2019, we received additional documents from the RRD which contained documents from 2007. On November 18, 2019 we received the BEA file from the RRD which contained documents from 2008.

Although we specifically requested investigation materials from August 2018 to present, including the documents regarding this alleged Violation Notice, as of November 19, 2019, no documents responsive to the request had been produced, and no explanation was provided by EGLE.

Accordingly, in our telephone discussion of November 19, 2019 you agreed to extend RJI's response date by 2 weeks, until December 6, 2019, while additional documents responsive to the request could be located and produced. It was not until Friday November 22, 2019 that we first received any documents relating to the requested time period.

After reviewing those documents, it became apparent that a number of responsive documents pertaining to the requested timeframe, August 2018 to present, have not been included, notably attachments to emails referenced in the body of the communications, and missing investigation notes.

EGLE has not produced nor furnished us with an objection to the request. Additionally, we have not received an explanation letter identifying those documents or materials not provided or which were withheld from the FOIA production. Since we have not received the Department's confirmation that it has completed its review and production, and identification of materials that have been withheld, we presume that additional documents are being gathered and reviewed by EGLE for production. Please inform us when the Department will complete its production.

In the interim, given the incomplete production and the intervening Thanksgiving holiday we requested by telephone and email an additional 1 week (to December 13, 2019) to respond to the Violation Notice, pending receipt of additional documentation from EGLE. As of this moment, we have received no response to this request.

Accordingly, even though EGLE's production is incomplete, RJI submits this Preliminary Response to the October 29, 2019 Alleged Violation Notice in its continuing full cooperation with EGLE, subject to RJI's reservation of its rights to supplement this Preliminary Response.

RJI does not waive any of its objections to EGLE's incomplete production, and reserves the right to supplement this Preliminary Response to the Alleged Violation Notice after EGLE has fully complied with its obligations pursuant to the Freedom of Information Act.

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**FOIA Request**

After EGLE issued its Violation Notice letter, RJI submitted a Freedom of Information Act (FOIA) request to EGLE to assist it in evaluating the information upon which EGLE relied in issuing its alleged violation notice. The FOIA request sought copies of all documents and records in possession of EGLE AQD relating to site visit(s)/observations and investigations at the former TRW Integrated Chassis Systems (TRW Facility) located at 2328 East Genesee Avenue, Saginaw, Michigan from August 2018 to present, including but not limited to October 21, 2019; such requested documents include all records pertaining to the TRW Facility including but not limited to: photos, notes, electronic and recorded communications and records; interview recordings; investigation files including all notes, photos, reports, communications and data; any notices of intent to renovate and/or demolish; any asbestos/ACM/RACM surveys and reports; and all documents or records relating to SRN: B1993, Saginaw County, Violation Notice dated October 29, 2019 including each document relating to each specific alleged violation contained within the Violation Notice dated October 29, 2019; a list identifying by name and position all EGLE employees or representatives that conducted or participated in inspections or investigations at the TRW Facility and the dates of their site visits; all records pertaining to the demolition contractor that performed work at the property, Messaros, Inc. of 2936 Robert Park, Springfield Ohio 45502 or any of its employees or representatives including Fred Messaros; any records pertaining to the owner of the TRW Facility, Applied Partners, Inc. (aka AP-Sag, LLC (AP-Sag). In addition, the FOIA request sought all documents and records of EGLE BEA and Due Care Plan files for the TRW Facility including but not limited to any Phase I and Phase II Environmental Assessments with attachments pertaining to the property at 2328 East Genesee Avenue, Saginaw, Michigan.

The FOIA production is lacking many of the categories of documents and records requested, without explanation. Significantly, among other things, exhibits and attachments referred to within many of the communications provided were not furnished.

**SUMMARY RESPONSE**

AP-Sag and RJI are treating this event as an “asbestos abatement of unanticipated discovery of ACM”. The event and cleanup are being conducted as outlined in the AP-Sag Abatement and Dismantling Plan for the former Delphi TRW plant Saginaw Michigan, as revised September 2018. The November 14, 2019 AP-Sag Reply Letter and Proof Package (AP-Sag Reply) in response to the Violation Notice letter and its attached 2.3 section of the plan (all attached and relied upon by RJI) outlines the action being taken in response to the unanticipated discovery of ACM.

As confirmed by AP-Sag, the project and the site are in compliance with the requirements of Title 40 of the Code of Federal Regulations, Part 61, NESHAP Sub Part M, as adopted by reference by 1995 AACS R336.1942 (Rule 942). The observations and assertions outlined in your letter of October 29, 2019 are a consequence of post-abatement unanticipated discovery of ACM and are distinguishable from identified and planned asbestos demolition.

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The first indication of the presence of unplanned asbestos occurred on October 15, 2019 when two suspect materials were discovered in the debris. One was a brownish, homogeneous, non-fibrous material, and the other a black homogeneous, non-fibrous material. Both of these materials were unfamiliar, and their identification at the site relative to asbestos could not be confirmed. Work in the area of the discovery was ceased immediately and two samples were sent to Apex Research in Whitmore Lake Michigan to be tested for ACM. (Apex Order No. 86934 is attached for verification.)

On October 16, 2019 Apex Report No. 19-86934 was received reporting “No Asbestos Observed”. A copy of the report is attached for verification.

On October 20, 2019 a white clay-type material was found in an area of pooling water. The material could not be confirmed to relate to asbestos at the site, therefore active demolition work at the area of discovery was halted. Arrangements were made to take the sample the following day by Apex Research for testing. Attached is their Order No. 87060 and Apex Report No. 19-87060 confirming asbestos content. The October 21, 2019 EGLE inspection occurred while awaiting the test results. At that time, AP-Sag initiated its procedures outlined in section 2.5 of its September 2018 (revised) Abatement and Dismantling Plan.

RJI is optimistic that upon review of RJI’s Preliminary Response, EGLE will reconsider the Violation Notice, or otherwise determine that RJI has complied with the requirements of Title 40 of the CFR.

The following is RJI’s Preliminary Response to each of the Sections for which EGLE issued its Violation Notice letter of October 29, 2019.

**A. 40 CFR 61.145(b)(1)**

**(1) Failure to provide 10 working day notification.**

**Response:**

Based upon the attached AP-Sag Reply (November 14, 2019 Reply Letter and Proof Package) to the EGLE Violation Notice which RJI incorporates by reference, AP-Sag’s demolition contractor, Messaros Inc. of Springfield Ohio (Messaros), and abatement contractor Greene Environmental Services, Inc. (Greene), did file the requisite 10-day notices on Oct/19/2018 and Nov/27/2018, copies of which are attached for verification. RJI was under no obligation to provide independent or additional 10 working day notification as asbestos abatement had been completed and confirmed by AP-Sag.

Messaros was the demolition contractor on site from Fall, 2018, through September, 2019. On September 17, 2019, prior to RJI setting foot on the site to commence any work, AP-Sag gave express assurance to RJI that all asbestos abatement had been completed across the site. Thus, before RJI came onto the site on September 28, 2019 for the first time to begin conducting limited site demolition work following the firing of Messaros Inc., it was assured that all asbestos abatement had been completed. All demolition on site had been conducted by

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Messaros, which left demo debris scattered across the property, none of which was the responsibility of RJI, nor caused by RJI.

**B. 40 CFR 61.145(c)(1)**

**(2) Failure to remove RACM.**

**Response:**

AP-Sag assured RJI that it had contracted for complete ACM abatement for pre-demolition which was completed and documented before any demolition was started by Messaros in the Fall of 2018. There was no ACM discovered on site at the commencement of the demolition by Messaros in 2018. On September 17, 2019, before RJI commenced its limited demolition work, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site on September 28, 2019 to commence any work. During the demolition process there was a finding of unanticipated discovery of ACM, at which time the process as outlined in 2.5 of the Abatement and Dismantling Plan was commenced.

**C. 40 CFR 61.145(c)(3)**

**(3) Failure to wet during stripping.**

**Response:**

According to AP-Sag, at the time of demolition commencement by Messaros in 2018 the buildings were abated, and the demolition work did not include ACM "stripping" (there was no known or visible remaining ACM at any part of a facility or facility component). On September 17, 2019, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site to commence any work. Thus, before RJI came onto the site on September 28, 2019 for the first time to begin conducting limited site demolition work following the firing of Messaros Inc., it was assured that all asbestos abatement had been completed. All demolition on site had been conducted by Messaros, which left demo debris scattered across the property, none of which was the responsibility of RJI, nor caused by RJI. The non-asbestos demolition work being done until the discovery of unanticipated ACM was not required to be wetted during the demolition. According to AP-Sag as soon as the unanticipated ACM was discovered the "stripping" or demolition was stopped.

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**D. 40 CFR 61.145(c)(4)**

**(4) Failure to contain in leak tight container.**

**Response:**

According to AP-Sag, the initial demolition was commenced by Messaros after the buildings were abated for all surveyed ACM and therefore no Hazmat container was required to be on site. All ACM was removed from the site and appropriately disposed. There was no ACM discovered on site at the commencement of the demolition by Messaros in 2018, nor before RJI commenced its limited demolition work on September 28, 2019. On September 17, 2019, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site to commence any work. When the first concerned material was discovered on October 15, 2019, a Hazmat leak-tight container was ordered for placement on site as a precaution to manage unanticipated discovery of ACM and to expedite its removal quickly. Attached is the Hazmat container order from Young's Environmental Cleanup Inc. as verification.

**E. 40 CFR 61.145(c)(6)(i)**

**(5) Failure to wet RACM that has been stripped.**

**Response:**

According to AP-Sag, there was no ACM "stripping" work being performed that required wetting. The initial demolition was commenced by Messaros after the buildings were abated for all surveyed ACM, and according to AP-Sag all ACM was removed from the site and appropriately disposed. There was no ACM discovered on site at the commencement of the demolition by Messaros in 2018, nor before RJI commenced its limited demolition work on September 28, 2019. On September 17, 2019, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site to commence any work. When possible ACM was discovered and tested, the ACM was already on the ground. According to AP-Sag it has been, is and will be wetted until removed.

**F. 40 CFR 61.145(c)(8)**

**(6) No contractor supervisor on site.**

**Response:**

According to AP-Sag, upon the event of identifying ACM after initial abatement and removal, AP-Sag has had a full time Project Manager on site. RJ Industrial also had a Supervisor on site when RJI was on site. Prior to identifying ACM, there was no identified need for a NESHAP contractor or supervisor on site. According to AP-Sag, all work going forward cleaning up the unanticipated ACM will require NESHAP contractor supervision, and this supervision will be on site.

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**G. 40 CFR 61.145(c)(9)**

**(7) Failure to wet RACM during demolition.**

**Response:**

According to AP-Sag, at the time of the EGLE inspection the site activity included an industry standard demolition. There was no planned or anticipated ACM remediation which required wetting during wrecking operations, because the building and site had already been abated of all known ACM. There was no ACM discovered on site at the commencement of the demolition by Messaros in 2018, nor before RJI commenced its limited demolition work on September 28, 2019. On September 17, 2019, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site to commence any work.

**H. 40 CFR 61.150(a)(1)(ii)**

**(8) Visible emissions from handling operations.**

**Response:**

Neither AP-Sag nor RJI understand that there have been incidents or discharges of visible emissions to the outside air from their operations at the GM/Delphi/TRW site demolition, since RJI's limited site involvement commenced September 28, 2019.

The initial demolition was commenced by Messaros after the buildings were abated for all surveyed ACM, and according to AP-Sag all ACM was removed from the site and appropriately disposed. There was no ACM discovered on site at the commencement of the demolition by Messaros in 2018, nor before RJI commenced its limited demolition work on September 28, 2019. On September 17, 2019, AP-Sag assured RJI that all abatement had been completed across the site, prior to RJI setting foot on the site to commence any work.

**I. 40 CFR 61.150(b)(1)**

**(9) Failure to deposit asbestos containing waste material as soon as practical.**

**Response:**

According to AP-Sag, as soon as possible after discovery of possible ACM, AP-Sag attempted to contract for services from licensed remediation companies to manage removal and waste disposal consistent with regulations and laws. This was all done in the span of less than a week, more than a reasonable period of time under the circumstance.

**Conclusion**

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According to AP-Sag, to this point all work demolishing the project has stopped, the discovered ACM has been isolated and is being kept wet, a letter outlining the actions to remedy the situation has been conveyed to EGLE, a remediation contractor has been selected and the work is being scheduled. RJI will continue to keep EGLE informed of its progress, at such time as it returns to the project.

Given its limited activities at the site following more than a year of demolition work performed by Messaros from Fall, 2018 through September, 2019 which left demo debris scattered across the property, none of which was the responsibility of RJI, nor caused by RJI, and given the assurances provided to RJI by AP-Sag that all asbestos abatement had been completed before RJI first came to the site, and for the reasons set forth above, RJI respectfully requests that EGLE reconsider its Violation Notice letter dated October 29, 2019.

RJI reserves the right to supplement its Preliminary Response. Please let us know when the remaining FOIA materials will be produced so additional supplementation can be provided to this preliminary response.

Very truly,

**KOTZ SANGSTER WYSOCKI P.C.**



GEORGE F. CURRAN, III

GFC/med  
Enclosure  
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and Email to [karlm@michigan.gov](mailto:karlm@michigan.gov)**

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