

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

Case No. 17-000727-CE

v

HON. CLINTON CANADY, III

MICHIGAN SUGAR COMPANY,

Defendant.

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CONSENT JUDGMENT

The Plaintiff in this case is the Michigan Department of Environmental Quality (DEQ). The Defendant is Michigan Sugar Company, a Michigan corporation (Michigan Sugar). Michigan Sugar owns and operates a sugar production facility located at 2600 South Euclid Avenue, Bay City, Michigan (Bay City Facility).

In the Complaint, the DEQ alleged that Michigan Sugar violated Rule 901 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1901 (Rule 901), by emitting odors that caused an unreasonable interference with the comfortable enjoyment of life and property. The DEQ also alleged that Michigan Sugar has created a public nuisance by emitting odors from the Bay City Facility that unreasonably interfere with the public's right to use their property. In addition, the DEQ alleged that Michigan Sugar violated effluent limitations and storm water requirements in National Pollutant Discharge Elimination System Permit No. MI0001091 that the DEQ issued to Michigan Sugar (NPDES Permit). Further, the DEQ alleged that Michigan Sugar violated Section 3112(1) of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3112(1), by discharging wastewater to waters of the state without a valid permit. The DEQ brought this action seeking, among other things, to abate the public nuisance and to stop Michigan Sugar's violations of Rule 901, the NPDES Permit, and Section 3112(1) of Part 31 of the NREPA.

Michigan Sugar denies the allegations in the Complaint.

The DEQ and Michigan Sugar (Parties) agree that settlement of this action is in the public interest and that entry of this Consent Judgment, without further litigation, is the most appropriate means of resolving the issues raised herein. The Parties agree to and shall be bound by the terms and conditions of this Consent Judgment.

The entry of this Consent Judgment by Michigan Sugar is not an admission of liability with respect to any issue raised in the Complaint, nor is it an admission of any fact alleged therein. Michigan Sugar maintains that it is not liable for civil fines or injunctive relief and is agreeing to the terms and conditions of this Consent Judgment solely to settle disputed claims without incurring the time and expense of contested litigation.

NOW, THEREFORE, before the taking of any testimony, and without trial of any issue of fact or law, and upon the consent of the Parties, by their attorneys in this case, it is ORDERED:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action pursuant to Section 605 of the Revised Judicature Act (RJA), MCL 600.605, Section 5530(5) of Part 55, Air Pollution Control, of the NREPA, MCL 324.5530(5), and Section 3115(1) of Part 31, Water Resources Protection, of the NREPA, MCL 324.3115(1). The Court has personal jurisdiction over Michigan Sugar pursuant to Section 711 of the RJA, MCL 600.711.

1.2 Venue in this Court is proper pursuant to MCL 14.102, MCL 324.3115(1), and MCL 324.5530(5).

1.3 The Court has determined that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised herein, and properly protect the interests of the people of the State of Michigan.

II. APPLICATION

2.1 The terms and conditions of this Consent Judgment shall be binding on the Parties to this action and their successors and assigns. No change or changes in the ownership or corporate status or other legal status of Michigan Sugar, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Michigan Sugar's responsibilities under this Consent Judgment.

2.2. In the event Michigan Sugar sells or transfers the Bay City Facility during the term of this Consent Judgment, Michigan Sugar shall advise any purchaser or transferee of the existence of this Consent Judgment in connection with such sale or transfer. Michigan Sugar shall also notify the DEQ in writing within ten calendar days after such sale or transfer, provide the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Judgment has been given to the purchaser or transferee.

2.3 The signatories to this Consent Judgment certify that they are authorized to execute this Consent Judgment and to legally bind the Parties they represent.

III. OBJECTIVES OF THIS CONSENT JUDGMENT

3.1. The Parties' objectives of this Consent Judgment are to settle the violations alleged in the Complaint in a manner and under terms satisfactory to the Parties.

IV. DEFINITIONS

4.1 Terms used in this Consent Judgment that are defined in Part 31 of the NREPA and Part 55 of the NREPA or in the administrative rules promulgated pursuant to Part 31 and Part 55 shall have the meaning assigned to them in those statutes and administrative rules, unless otherwise provided in this Consent Judgment.

4.2 Whenever the terms set forth below are used in this Consent Decree, including attached appendices, the following definitions shall apply:

a. "Aeration Ponds" means the ponds at the Bay City Facility in which aerobic treatment is used to treat wastewater from the Bay City Facility and storm water from the Storm Water Pond prior to discharge to the Saginaw River. As of the Effective Date of this Consent Judgment, there are four active Aeration Ponds. They are depicted in Appendix A to this Consent Judgment (in order of flow) as the East Aeration Pond, the West Aeration Pond, the New Aeration Pond, and the Final Aeration Pond. Another Aeration Pond known as the Main Aeration Pond is, as of the Effective Date of this Consent Judgment, not in use for aerobic treatment of wastewater. For the purposes of this Consent Judgment, the Main Aeration Pond will not be deemed to be an "Aeration Pond" unless and until such pond is used for aerobic treatment of wastewater. The Aeration Ponds are depicted in Appendix A.

b. “Anaerobic Digester” means the digester at the Bay City Facility in which anaerobic treatment is used to treat wastewater from the Outer Pond. The Anaerobic Digester is depicted in Appendix A.

c. “Bay City Facility” means the sugar beet processing facility owned and operated by Michigan Sugar located at 2600 South Euclid Avenue, Bay City, Michigan.

d. “Beet Piling Grounds” means the areas at the Bay City Facility at which sugar beets are piled and stored before they are sent to the Beet Washing and Flume Process.

e. “Beet Washing and Flume Process” means the process at the Bay City Facility in which sugar beets are washed and floated in a water-filled trough (flume) into a building for further processing.

f. “Centrifuges” means the three centrifuges at the Bay City Facility into which the underflow from the Flume Clarifier is conveyed. The Centrifuges are depicted in Appendix A.

g. “Channel” means the channel between the Flume Ponds and the Beet Piling Grounds. The Channel is depicted in Appendix A.

h. “Cover” means the covering over the Outer Pond that reduces the release of gases from the Outer Pond into the atmosphere.

i. “DEQ” means the Michigan Department of Environmental Quality.

j. “Dissolved Oxygen Sampling Plan” means the plan attached to this Consent Judgment as Appendix B for sampling dissolved oxygen in each of the Aeration Ponds.

k. “Effective Date” means the date of entry of this Consent Judgment by the Court as recorded on the Court docket or, if the Court instead issues an order approving this Consent Judgment, the date such order is recorded on the Court docket, whichever occurs first.

l. “Flume Clarifier” means the settling tank that removes suspended solids from the Beet Washing and Flume Process. The Flume Clarifier is depicted in Appendix A.

m. “Flume Ponds” means the series of five ponds at the Bay City Facility into which water is conveyed from the Beet Washing and Flume Process, Flume Clarifier, and Centrifuges prior to reuse or discharge. They are depicted in Appendix A (in order of flow) as the Lower Mud Pond, the Narrow Mud Pond, the Primary Mud Pond, the South Outer Mud Pond, and the Flume Return Pond.

n. “Hydroclones” means the hydroclones at the Bay City Facility that concentrate solids from wastewater for return to the Anaerobic Digester.

o. “Hydrogen Peroxide System for the Flume Ponds” means the equipment at the Bay City Facility for applying hydrogen peroxide to the Flume Ponds.

p. “Hydrogen Peroxide System for the Storm Water Pond” means the equipment at the Bay City Facility for applying hydrogen peroxide to the Storm Water Pond.

q. “Internal Road” means the private road within the property boundaries of the Bay City Facility depicted in Appendix A.

r. “Lamella Clarifiers” means the clarifiers that treat wastewater from the Anaerobic Digester and that route wastewater to the East Aeration Pond and the West Aeration Pond. The Lamella Clarifiers are depicted in Appendix A.

s. “Mechanical Street Sweeper” means a street sweeper or similar vehicle that removes and collects dirt and debris from a street.

t. “Michigan Sugar” means the Michigan Sugar Company.

u. “NPDES Permit” means National Pollutant Discharge Elimination System Permit No. MI0001091 that the DEQ issued to Michigan Sugar on January 1, 2011 and any extensions, modifications, amendments, or renewals thereof, when effective.

v. “Operations Plan” means the plan attached to this Consent Judgment as Appendix C that includes operating, recordkeeping, and reporting requirements for the following: Beet Piling Grounds; Centrifuges; Flume Ponds Solids removal; Hydrogen Peroxide System for the Flume Ponds; Hydrogen Peroxide System for the Storm Water Pond; Channel;

Cover; Aeration Ponds; Main Aeration Pond as a temporary storage basin; and track-out controls for truck traffic.

w. “Outer Pond” means the pond at the Bay City Facility from which wastewater and storm water is routed to the Anaerobic Digester and which is depicted in Appendix A.

x. “Paragraph” means a portion of this Consent Judgment identified by an Arabic number.

y. “Parties” means the Michigan Department of Environmental Quality and the Michigan Sugar Company.

z. “Peak Harvest Period” means the approximately three-week period from late October through early November of each year when the delivery of sugar beets by truck to the Bay City Facility is at its peak.

aa. “Rule 901” means Rule 901 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1901.

bb. “Section” means a portion of this Consent Judgment identified by a Roman numeral.

cc. “Semi-Annual Reporting Period” means the half-year period for each semi-annual report described in Paragraph 7.1.

dd. “Solids” means the material, including beet tailings (pieces of sugar beets) and soil removed from sugar beets during the Beet Washing and Flume Process, that settle in the Flume Ponds.

ee. “Storm Water Pond” means the pond at the Bay City Facility depicted in Appendix A into which storm water from the Beet Piling Grounds is routed.

ff. “Waste Sludge Pond” means the pond at the Bay City Facility depicted in Appendix A into which solids and sludge from the Lamella Clarifiers has been placed.

gg. “Wastewater Treatment System” means the system at the Bay City Facility that treats wastewater from, among other sources, the Beet Washing and Flume Process and sugar manufacturing processes at the Bay City Facility and that includes the Anaerobic Digester, Hydroclones, Lamella Clarifiers, and Aeration Ponds. This definition is for the purpose of providing a point of reference in this Consent Judgment only, including its Appendices, and it is not intended to be determinative as to whether any water at the Bay City Facility is “wastewater” or whether any equipment and processes at the Bay City Facility are used to treat “wastewater.” Michigan Sugar and the DEQ reserve their rights to assert that equipment and processes other than the Anaerobic Digester, Hydroclones, Lamella Clarifiers, and Aeration Ponds treat “wastewater” at the Bay City Facility.

Any capitalized terms that are defined in an Appendix to this Consent Judgment shall have the meaning set forth in that Appendix.

V. OPERATING REQUIREMENTS

5.1. On and after the Effective Date of this Consent Judgment, Michigan Sugar shall operate and maintain the Centrifuges and the Hydrogen Peroxide System for the Flume Ponds pursuant to the operating requirements in the Operations Plan.

5.2 Michigan Sugar installed the Cover for the Outer Pond in September of 2018. A description of the Cover is provided in Appendix D.

5.3 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall operate and maintain the Cover pursuant to the operating requirements in the Operations Plan.

5.4 Michigan Sugar installed the Hydrogen Peroxide System for the Storm Water Pond in December of 2018.

5.5 On and after January 1, 2019, or the Effective Date of this Consent Judgment, whichever is later, Michigan Sugar shall operate and maintain the Hydrogen Peroxide System for the Storm Water Pond pursuant to the Operations Plan.

5.6 On and after June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later, Michigan Sugar shall maintain a dissolved oxygen concentration in each of the Aeration Ponds of at least 1.0 milligram per liter (mg/l) as a calendar day average pursuant to the Dissolved Oxygen Sampling Plan.

5.7 On and after June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later, Michigan Sugar shall perform sampling to determine the dissolved oxygen concentration in each of the Aeration Ponds. Michigan Sugar shall perform the sampling pursuant to the Dissolved Oxygen Sampling Plan.

5.8 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall not place any solids or sludge from the Lamella Clarifiers or Hydroclones into the Waste Sludge Pond or into any location at the Bay City Facility where such solids or sludge are exposed to the outdoor air. Notwithstanding the foregoing, if Michigan Sugar de-waters any such solids or sludge from the Lamella Clarifiers or Hydroclones, it may process or treat the removed water at the Bay City facility in locations other than the Waste Sludge Pond and may place the de-watered solids or sludge into a three-sided structure at the Bay City Facility that is covered by a roof.

5.9 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall perform any removal of Solids from the Flume Ponds pursuant to the operating requirements in the Operations Plan.

5.10 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall process the sugar beets on the Beet Piling Grounds pursuant to the operating requirements in the Operations Plan.

5.11 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall manage the material, including storm water, in the Channel pursuant to the operating requirements in the Operations Plan.

5.12 By August 15, 2019, Michigan Sugar shall have fully paved the Internal Road.

5.13 After August 15, 2019, Michigan Sugar shall maintain the Internal Road pursuant to the operating requirements in the Operations Plan.

5.14 After August 15, 2019, and except during the Peak Harvest Period, Michigan Sugar shall route trucks that have delivered sugar beets to the Bay City Facility and all trucks that are carrying pressed beet pulp onto the Internal Road for exit onto South Euclid Avenue pursuant to the operating requirements in the Operations Plan.

5.15 By August 15, 2019, Michigan Sugar shall have installed rumble strips on the Internal Road pursuant to the specifications described in the operating requirements in the Operations Plan.

5.16 After August 15, 2019, Michigan Sugar shall maintain the rumble strips referenced in Paragraph 5.15 pursuant to the operating requirements in the Operations Plan.

5.17 After August 15, 2019, Michigan Sugar shall operate a street sweeper on the Internal Road during the time period when trucks that have delivered sugar beets to the Bay City Facility and trucks carrying pressed beet pulp are exiting the Bay City Facility onto South Euclid Avenue via the Internal Road. Michigan Sugar

shall operate the street sweeper pursuant to the operating requirements in the Operations Plan.

5.18 On and after the Effective Date of this Consent Judgment, during each Peak Harvest Period Michigan Sugar shall implement the following actions pursuant to the operating requirements in the Operations Plan to reduce track out from trucks during each Peak Harvest Period:

- (a) operating a Mechanical Street Sweeper on South Euclid Avenue;
- (b) cleaning out the catch basins on South Euclid Avenue within seven days after the end of each Peak Harvest Period; and
- (c) disposing of the material pursuant to applicable law.

5.19 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall operate a Mechanical Street Sweeper on South Euclid Avenue and clean out catch basins along South Euclid Avenue pursuant to the operating requirements in the Operations Plan.

5.20 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall prevent trucks tracking out dirt from the Beet Piling Grounds that causes receiving waters to contain unnatural turbidity, color, oil films, floating solids, foams, settleable solids, suspended solids, or deposits.

5.21 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall employ an individual full time at the Bay City Facility to oversee the operation of the Flume Clarifier, Hydroclones, Centrifuges, Flume Ponds, Hydrogen Peroxide System for the Flume Ponds, Outer Pond, Anaerobic Digester, Aeration

Ponds, Main Aeration Pond, and Storm Water Pond (the “Operator”). Within six months after the Effective Date of this Consent Judgment, the Operator shall be certified for the following DEQ wastewater treatment classifications: A-1b Plain Clarification; A-1h Non-Contact Cooling Water; A-1i Storm Water Management-Industrial Site; A-2e Centrifuging; B-2a Chemical Clarification; and C-1b Aerated Lagoons. Within six months after the Effective Date of this Consent Judgment, the Operator shall also have successfully completed at least one of the following classes: (1) Fundamentals of Anaerobic Digester Operation and Control by the Michigan Water Environment Association; or (2) Anaerobic Digester Operator Training by Marquette University. If the Operator resigns or is terminated, Michigan Sugar shall employ a replacement Operator within 90 days after the resignation or termination. Within twelve months after Michigan Sugar employs a replacement Operator, the replacement Operator shall be certified for the DEQ wastewater treatment classifications identified in this Paragraph and shall have completed one of the classes identified in this Paragraph (or if such class is not available, an equivalent class). During the period beginning 90 days after the resignation or termination and until such time as Michigan Sugar employs a replacement Operator who is certified and has completed at least one of the classes as required by this Paragraph, the replacement Operator and the individuals the replacement Operator supervises at the Bay City Facility shall collectively be certified for the DEQ wastewater treatment classifications identified in this Paragraph and either

the replacement Operator or the individuals the replacement Operator supervises at the Bay City Facility shall have completed the class identified in this Paragraph.

5.22 On and after the Effective Date of this Consent Judgment, if Michigan Sugar routes water from the Outer Pond to the Main Aeration Pond or any portion thereof as a temporary storage basin, then Michigan Sugar shall manage any such water pursuant to the operating requirements in the Operations Plan.

5.23 On and after the Effective Date of this Consent Judgment, Michigan Sugar shall comply with the requirements of the NPDES Permit, Part I, Section A.1 (Final Effluent Limitations for Monitoring Point 005A), provided, however, that Michigan Sugar shall not be required to comply with the final effluent limitation for Total Suspended Solids in the NPDES Permit, Part I, Section A.1 until August 15, 2019. If Michigan Sugar has not complied with the final effluent limitation for Total Suspended Solids by June 1, 2019, then Michigan Sugar shall undertake additional measures intended to achieve compliance with the final effluent limitation for Total Suspended Solids in the NPDES Permit, Part I, Section A.1 by August 15, 2019 and notify the DEQ of such measures within 30 days after commencing their implementation.

5.24 On and after February 1, 2019, Michigan Sugar shall comply with the recordkeeping and reporting requirements in the Operations Plan for the following:

- a. Beet Piling Grounds;
- b. Centrifuges;
- c. Flume Ponds Solids removal;

- d. Hydrogen Peroxide System for the Flume Ponds;
- e. Hydrogen Peroxide System for the Storm Water Pond;
- f. Channel;
- g. Cover;
- h. Aeration Ponds;
- i. Main Aeration Pond as temporary storage basin; and
- j. Track-out controls for truck traffic.

5.25 At least once per calendar year, Michigan Sugar shall review the Operations Plan to determine if any updates are necessary to reflect any changes to the equipment and operations addressed therein or are necessary to maintain their effectiveness to control odors, to comply with the NPDES Permit, Part 1, Section A.1 (Final Effluent Limitations, Monitoring Point 005A), and to prevent trucks tracking out dirt from the Beet Piling Grounds that causes receiving waters to contain unnatural turbidity, color, oil films, floating solids, foams, settleable solids, suspended solids, or deposits. If Michigan Sugar determines no updates are necessary, then Michigan Sugar shall notify the DEQ of that determination within 30 days after making it. Michigan Sugar shall submit any proposed updates to the Operations Plan to the DEQ for review and approval pursuant to Section X of this Consent Judgment. The DEQ's review and approval of any proposed updates to the Operations Plan shall be based on their effectiveness to control odors, to comply with the NPDES Permit, Part 1, Section A.1 (Final Effluent Limitations, Monitoring Point 005A), and to prevent trucks tracking out dirt from the Beet

Piling Grounds that causes receiving waters to contain unnatural turbidity, color, oil films, floating solids, foams, settleable solids, suspended solids, or deposits. The DEQ may not disapprove a proposed update that it determines is effective at achieving the foregoing solely because the DEQ determines there are better or more effective alternatives than those proposed by Michigan Sugar. The updated Operations Plan as approved by the DEQ pursuant to Section X of this Consent Judgment shall be incorporated by reference into this Consent Judgment as a new Appendix C. Michigan Sugar shall comply with the updated Operations Plan as approved by the DEQ.

5.26. On and after the Effective Date of this Consent Judgment, Michigan Sugar shall ensure that the Flume Ponds, the Storm Water Pond, the Outer Pond, and the Aeration Ponds do not overflow to the Columbia Drain in violation of any permit or applicable law.

5.27 Basis of Design

a. In August 2018, Michigan Sugar submitted to the DEQ a Preliminary Basis of Design Summary for the Wastewater Treatment System that was prepared by Hubbell, Roth and Clark, Inc. (“HRC”). By April 1, 2019, Michigan Sugar shall submit to the DEQ a revised Preliminary Basis of Design Summary that includes the following:

- i. the data for the 2017-2018 Campaign that HRC used;
- ii. available wastewater loading trend data for an appropriate period (approximately the last ten years) that

demonstrates the 2017-2018 Campaign data is a representative and appropriate wastewater loading basis;

iii. a description of any assumptions used, including data and analysis, to correlate soluble chemical oxygen demand to biochemical oxygen demand (“BOD₅”);

iv. revisions to reflect the aeration equipment that Michigan Sugar will install in the Aeration Ponds; and

v. any other information that Michigan Sugar believes is necessary for the revised Basis of Design Summary.

b. By October 1, 2022, Michigan Sugar shall submit pursuant to Section X (Review and Approval of Submittals) a report that presents the design basis for the Wastewater Treatment System (“Basis of Design Report”). The Basis of Design Report shall evaluate whether the hydraulic and organic treatment capacity of the Wastewater Treatment System is adequate to meet the final effluent limitations for Monitoring Point 005A in the NPDES Permit, Part I, Section A.1. Michigan Sugar shall collect and submit for the Basis of Design Report data for the following 12-month periods: September 1, 2019 through August 31, 2020; September 1, 2020 through August 31, 2021; and September 1, 2021 through August 31, 2022. The data shall include daily measurements as follows:

i. Daily measurements of the influent to the Anaerobic Digester and the contents of the Anaerobic Digester for chemical oxygen demand (“COD”), total suspended solids (“TSS”), temperature,

peak daily flow rates for each 12-month period, and total daily flow rate;

ii. Daily measurements of the influent to and effluent from the Hydroclones for COD, TSS, and total daily flow rate;

iii. Daily measurements of the effluent from the Lamella Clarifiers for COD, total phosphorus, and TSS;

iv. Daily measurements of the effluent from each of the Aeration Ponds for COD, TSS, temperature, ammonia, and total daily flow rate; and

v. any other parameters or information Michigan Sugar believes is necessary for the Basis of Design Report.

The Basis of Design Report shall identify the influent sources to the Outer Pond and the flow rate of each such influent source for each 12-month period. The Basis of Design Report shall describe any assumptions used, including any data and analysis used to correlate volatile suspended solids or soluble chemical oxygen demand to BOD₅.

c. By December 31, 2020 and December 31, 2021, Michigan Sugar shall submit to the DEQ the data identified in Paragraph 5.27(b) for the 12-month periods September 1, 2019 through August 31, 2020, and September 1, 2020 through August 31, 2021, respectively.

5.28 Michigan Sugar has notified the DEQ that it may elect to submit an application for a storm water discharge permit to discharge all storm water from

the Storm Water Pond to the Saginaw River. If the DEQ issues such a permit to Michigan Sugar, the DEQ agrees that the Operations Plan may be modified as necessary to allow for such permitted discharge.

5.29 Nothing in this Consent Judgment (including its appendices) shall be deemed or construed to prevent Michigan Sugar from voluntarily undertaking new or additional measures to improve water quality or air quality.

VI. EVALUATION OF OPERATING REQUIREMENTS

6.1 From the Effective Date of this Consent Judgment until June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later, the DEQ shall not cite Michigan Sugar for violations of Rule 901 or allege any claims relating to a public nuisance created by the emission of odors from the Bay City Facility.

6.2 If the DEQ determines Michigan Sugar has violated Rule 901 at any time after June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later, then the DEQ may cite Michigan Sugar for any such violations by sending Michigan Sugar one or more violation notices.

6.3 If the DEQ sends Michigan Sugar a violation notice pursuant to Paragraph 6.2, then the Parties shall meet within thirty days after the DEQ sends the violation notice to try to negotiate a resolution of the alleged violations. The period of negotiations shall not exceed thirty days from the date of the Parties' first

meeting, but it may be extended by a written agreement of the Parties. If the Parties cannot resolve the alleged violations, then the DEQ may amend Count I of the Complaint (Violations of Rule 901 of the Michigan Air Pollution Control Rules) and Count II of the Complaint (Public Nuisance) regarding any odors emitted from the Bay City Facility at any time after June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later.

6.4 If the DEQ sends Michigan Sugar a violation notice pursuant to Paragraph 6.2, then Michigan Sugar shall not be required to invoke dispute resolution pursuant to Section XIII of this Consent Judgment (Dispute Resolution) or otherwise contest or dispute any alleged violations of Rule 901 in order to preserve any rights, claims and defenses with regard to such alleged violations in this case or in any subsequent legal proceeding, including, but not limited to, the right to dispute whether a violation has occurred. Furthermore, the failure or refusal of Michigan Sugar to dispute or challenge any violation notice issued by the DEQ pursuant to Paragraph 6.2 shall not be deemed an admission or acknowledgment that Michigan Sugar violated Rule 901 or otherwise caused nuisance conditions.

6.5 From the Effective Date of this Consent Judgment until August 15, 2019, the DEQ shall not cite Michigan Sugar for violating Paragraph 5.20, which requires Michigan Sugar to prevent trucks tracking out dirt from the Beet Piling Grounds from causing receiving waters to contain unnatural turbidity, color, oil

films, floating solids, foams, settleable solids, suspended solids, or deposits, or for any violations of the NPDES Permit, Part I, Section A.6 based on such track out.

6.6 From August 16, 2019 until September 1, 2020, the DEQ shall evaluate whether Michigan Sugar has violated Paragraph 5.20. If the DEQ determines that Michigan Sugar has violated Paragraph 5.20 after August 16, 2019, then the DEQ may cite Michigan Sugar for any such violations by sending Michigan Sugar one or more violation notices.

6.7 If the DEQ sends Michigan Sugar one or more violation notices pursuant to Paragraph 6.6, then the Parties shall meet within thirty days after the DEQ sends Michigan Sugar the first violation notice to try to negotiate a resolution of the alleged violations. The period of negotiations shall not exceed thirty days from the date of the Parties' first meeting, but it may be extended by a written agreement of the Parties. If the Parties cannot resolve the alleged violations, then the DEQ may amend Count IV of the Complaint (Violations of Storm Water Requirements in NPDES Permit No. MI0001091) regarding any such violations after August 15, 2019.

6.8 If the DEQ sends Michigan Sugar a violation notice pursuant to Paragraph 6.6, then Michigan Sugar shall not be required to invoke dispute resolution pursuant to Section XIII of this Consent Judgment (Dispute Resolution) or otherwise contest or dispute any such alleged violations in order to preserve any rights, claims, and defenses with regard to such alleged violations in this case or in any subsequent legal proceeding, including, but not limited to, the right to dispute whether a violation has occurred. Furthermore, the failure or refusal of Michigan

Sugar to dispute or challenge any violation notice issued by the DEQ pursuant to Paragraph 6.5 shall not be deemed an admission or acknowledgment that Michigan Sugar has not prevented trucks tracking out dirt from the Beet Piling Grounds from causing receiving waters to contain unnatural turbidity, color, oil films, floating solids, foams, settleable solids, suspended solids, or deposits.

VII. REPORTING REQUIREMENTS

7.1 Michigan Sugar shall submit semi-annual reports no later than March 15 and September 15 of each year, with the first semi-annual report due on the first March 15 or September 15 that occurs more than ninety days after the Effective Date. Each semi-annual report shall contain the following information with respect to, respectively, the half-year between July 1 and December 31, or the half-year between January 1 and June 30 (each such half-year period constituting a separate Semi-Annual Reporting Period), commencing on the Effective Date:

a. Identification of work performed and progress made toward implementing the requirements of Section V (Operating Requirements), including a narrative description of activities undertaken, the status of any construction or compliance measures, and the completion of any milestones. This information includes, but is not limited to, identification and description of all non-compliance with any of the requirements under Section V (Operating Requirements), including the following: a description of the cause of any such noncompliance if known after reasonable investigation; a description of the investigation; the results of the

investigation; and the remedial steps taken, or to be taken, to prevent or minimize such noncompliance.

b. The information to be included in the semi-annual reports pursuant to the Operations Plan.

7.2 All semi-annual reports required under this Consent Judgment shall be submitted to the persons and in the manner designated in Section XI (Notices).

7.3 Each semi-annual report submitted by Michigan Sugar under this Section shall be signed by the Operator identified in Paragraph 5.21 and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. I further certify that Michigan Sugar has not purposefully or intentionally failed or refused to undertake or maintain any recordkeeping or reporting required pursuant to this Consent Judgment for the purpose of avoiding fines, penalties or enforcement. Based on my inquiry of the person or person who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly or intentionally submitting false information, including the possibility of fine and imprisonment for knowing violations.

VIII. CIVIL FINE

8.1 Within thirty days after the Effective Date of this Consent Judgment, Michigan Sugar shall pay a civil fine of \$300,000 to the DEQ. Payment shall be made in the form of a certified check or cashier's check and made payable to the "State of Michigan." Payment shall be sent to:

Michigan Department of Environmental Quality
Accounting Services Division, Cashier's Office
P.O. Box 30657
Lansing, MI 48909-8157

To ensure proper credit, the check shall reference *Michigan Department of Environmental Quality v. Michigan Sugar Company*, and Payment Identification Number MUL40003.

8.2 Interest. If any portion of the civil fine due to the DEQ is not paid when due, then Michigan Sugar shall pay interest on the amount past due, accruing from the Effective Date through the date of payment, at the rate specified in MCL 600.6013(8).

IX. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

9.1. Michigan Sugar shall complete the supplemental environmental projects ("SEPs") in accordance with this Section and all provisions of Appendix E.

9.2. Michigan Sugar is responsible for the satisfactory completion of the SEPs in accordance with the requirements of this Consent Judgment. If Michigan Sugar elects to complete any SEP by third party contracting, the funds used to pay for the third party contracting services shall be included in the entire amount allotted to spend on the SEP so long as Michigan Sugar demonstrates that the funds have been actually spent by either Michigan Sugar or the person or instrumentality receiving them in carrying out the SEP, and that such expenditures met all requirements of this Consent Judgment. When utilizing a third party to implement a SEP, Michigan Sugar shall expend no more than 10% of the total

required expenditure for that SEP on administrative costs of the third party to implement the SEP.

9.3. Certification. For each SEP, Michigan Sugar certifies the truth and accuracy of each of the following:

a. That all cost information provided to the DEQ in connection with the DEQ's approval of the SEPs is complete and accurate and that Michigan Sugar in good faith estimates that the cost to implement the SEPs is as set forth in Appendix E.

b. That, as of the date of executing this Decree, Michigan Sugar is not required to perform or develop any of the SEPs by any federal, state, or local law or regulation and is not required to perform or develop any of the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum.

c. That neither of the SEPs is a project that Michigan Sugar was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Judgment.

d. That Michigan Sugar has not received and will not receive credit for the SEPs in any other enforcement action.

e. That Michigan Sugar will not receive reimbursement for any portion of the SEPs from another person or entity.

f. That Michigan Sugar is not a party to any state or federal financial assistance that is funding or could be used to fund the SEPs.

g. That for state and federal income tax purposes, Michigan Sugar shall neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

9.4. For each SEP, Michigan Sugar shall submit to the DEQ a SEP Completion Report no later than thirty (30) days after the SEP's completion. Each SEP Completion Report must be certified by an appropriate corporate official and shall contain, at a minimum:

- a. A detailed description of the SEP as implemented;
- b. A description of any problems encountered in completing the SEP and solutions thereto;
- c. An itemized list of all SEP costs expended, and documentation of all expenditures;
- d. Evidence of the SEP completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence from SEP recipients etc.);
- e. To the extent possible, documentation supporting the quantification of benefits associated with each SEP and an explanation of how such benefits were measured or estimated; and
- f. A certificate stating:

I certify that the project has been fully implemented pursuant to the provisions of the Consent Judgment entered in *Michigan Department of Environmental Quality v Michigan Sugar Company*, Case No. 17-000727-CD (Ingham County Circuit Court), that I am familiar with the information in this document, and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and

complete to the best of my knowledge. I know that there are significant penalties for knowingly or intentionally submitting false information, including the possibility of fines and imprisonment for knowing violations.

9.5. Following receipt of any SEP Completion Report described in the preceding Paragraph, the DEQ will notify Michigan Sugar in writing that:

a. Michigan Sugar has satisfactorily completed the SEP and the SEP Completion Report; or

b. Michigan Sugar has not satisfactorily completed the SEP and/or the SEP Completion Report and the DEQ will seek stipulated penalties under Section XIV (Stipulated Penalties), as applicable.

9.6. Any public statement, oral or written in print, film, or other media, made by Michigan Sugar making reference to any SEP under this Consent Judgment shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action in Michigan Department of Environmental Quality v Michigan Sugar Company to enforce state and federal laws.”

X. REVIEW AND APPROVAL OF SUBMITTALS

10.1 Initial Submissions. Whenever Michigan Sugar is required to submit a document for review or approval pursuant to this Consent Judgment, the DEQ shall promptly, in writing: (1) approve, in whole or in part, the submission; (2) approve, in whole or in part, the submission upon specified conditions; (3) disapprove, in whole or in part, the submission, requiring Michigan Sugar to correct the deficiencies; or (4) any combination of the foregoing.

10.2 Resubmissions. Upon receipt of a notice of approval in part; approval, in whole or in part, upon specified conditions; disapproval in whole or in part; or any combination of the foregoing, Michigan Sugar shall, within thirty days or such longer time as specified by the DEQ in such notice, either correct the deficiencies and resubmit the plan, report, or other deliverable for approval, or submit the matter for dispute resolution, including the period of informal negotiations, under Section XIII (Dispute Resolution) of this Consent Judgment. After review of the resubmitted plan, report, or other deliverable, the DEQ shall within thirty days or such longer time as the DEQ specified to Michigan Sugar: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) disapprove, in whole or in part, the resubmission, requiring Michigan Sugar to correct the deficiencies; or (4) any combination of the foregoing. Upon receipt of a notice of approval in part, approval, in whole or in part, upon specified conditions, disapproval, in whole or in part, or any combination of the foregoing, of the resubmission under this Paragraph, Michigan Sugar shall, within thirty days or such longer time as specified by the DEQ in such notice, either correct the deficiencies and resubmit the plan, report, or other deliverable for approval, or submit the matter for dispute resolution, including the period of informal negotiations, under Section XIII (Dispute Resolution) of this Consent Judgment.

10.3 Implementation. Upon approval by the DEQ under Paragraph 10.1 (Initial Submissions) or Paragraph 10.2 (Resubmissions), of any plan, report, or other submittal, or any portion thereof: (a) such plan, report, or other deliverable,

or portion thereof, shall be incorporated into and enforceable under this Consent Judgment; and (b) Michigan Sugar shall take any action required by such plan, report, or other deliverable in accordance with the schedules and requirements specified therein. If the submission is conditionally approved or approved only in part, pursuant to Paragraphs 10.1 or 10.2, Michigan Sugar shall, upon written direction from the DEQ, take all actions required by the approved plan, report, or other deliverable that the DEQ determines are severable from any disapproved portions unless Michigan Sugar invokes its right to dispute the specified conditions, the severability of the actions, or the disapproved portions under Section XIII (Dispute Resolution).

XI. NOTICES

11.1 Any submittal, notice, report, or documentation required by this Consent Judgment shall be submitted to the attention of:

For the DEQ: Chris Hare, District Supervisor
Michigan Department of Environmental Quality
Air Quality Division
Saginaw Bay District Office
401 Ketchum Street, Suite B
Bay City, MI 48708-5430
harec@michigan.gov

Jenine Camilleri, Enforcement Unit Manager
Michigan Department of Environmental Quality
Air Quality Division
Constitution Hall
525 West Allegan
P.O. Box 30260
Lansing, MI 48909-7760
camillerij@michigan.gov

Charles Bauer, District Supervisor
Michigan Department of Environmental Quality
Water Resources Division
Saginaw Bay District Office
401 Ketchum Street, Suite B
Bay City, MI 48708-5430
bauerc@michigan.gov

and

David Pingel, Enforcement Unit Manager
Michigan Department of Environmental Quality
Water Resources Division
Constitution Hall
525 West Allegan
P.O. Box 30458
Lansing, MI 48909-7958
pingeld@michigan.gov

For Michigan Sugar:

Eric Rupperecht
Environmental Engineer
Michigan Sugar Company
2600 Euclid Avenue
Bay City, MI 48706
eric.rupperecht@michigansugar.com

Nick Klein
Factory Manager
Michigan Sugar Company
2600 Euclid Avenue
Bay City, MI 48706
nick.klein@michigansugar.com

Either party may substitute for those designated to receive such notices by providing prior written notice to the other party.

XII. FORCE MAJEURE

12.1 Michigan Sugar shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is

prevented or delayed by events which constitute a “Force Majeure” event. Any delay in the performance attributable to “Force Majeure” shall not be deemed a violation of Michigan Sugar’s obligations under this Consent Judgment in accordance with this Section XII (Force Majeure).

12.2 For the purpose of this Consent Judgment, “Force Majeure” means an occurrence or non-occurrence beyond the control of and without the fault of Michigan Sugar, such as: an Act of God; untimely review of permit applications or submissions by the DEQ or other applicable authority; malfunctions; power outages; labor strikes; and acts or omissions of third parties that could not have been avoided or overcome by Michigan Sugar’s due diligence and that delay the performance of an obligation under this Consent Judgment. “Force Majeure” does not include, among other things, unanticipated or increased costs, changed financial circumstances, intentional or negligent failure to maintain equipment, failure to obtain a permit or license as a result of Michigan Sugar’s actions or omissions, or acts or omissions of a subcontractor that delay or prevent the performance of an obligation required under this Consent Judgment unless such acts or omissions are independently the result of a Force Majeure event.

12.3 Michigan Sugar shall notify the DEQ by email within five days of discovering any event which causes a delay in its compliance with any provision of this Consent Judgment. Initial email notice shall be followed by written notice within seven days of discovering the event and shall describe in detail the anticipated length of delay, the precise cause or causes of delay, the measures taken

by Michigan Sugar to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Michigan Sugar shall adopt all reasonable measures or minimize any such delay.

12.4 Failure of Michigan Sugar to comply with the notice requirements of Paragraph 12.3, above, shall render this Section XII (Force Majeure) void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 12.3.

12.5 If the Parties agree that the delay or anticipated delay was beyond the control of and without the fault of Michigan Sugar, this may be so stipulated and the Parties to this Consent Judgment may petition the Court for an appropriate modification of this Consent Judgment. If the Parties to this Consent Judgment are unable to reach such agreement, the dispute shall be resolved in accordance with Section XIII (Dispute Resolution) of this Consent Judgment. The burden of proving that any delay was beyond the control of and without the fault of Michigan Sugar, and that all the requirements of this Section XII (Force Majeure) have been met by Michigan Sugar, is on Michigan Sugar.

12.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Michigan Sugar qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XIII. DISPUTE RESOLUTION

13.1 The dispute resolution procedures of this Section XIII shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment.

13.2 Informal Dispute Resolution. Any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when Michigan Sugar sends the DEQ a written Notice of Dispute describing the matter in dispute. The period of informal negotiations shall not exceed thirty days from the date the dispute arises, but it may be extended by a written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the DEQ shall provide a written statement of its position regarding the dispute to Michigan Sugar within five business days following the period of informal negotiations. The DEQ's position shall be considered binding unless, within thirty days after the DEQ provides the written statement of its position, Michigan Sugar invokes the formal dispute resolution procedures set forth in the following Paragraph.

13.3 Formal Dispute Resolution. Michigan Sugar shall invoke formal dispute procedures, within the time period provided in the preceding Paragraph, by serving on the DEQ a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Michigan Sugar's position and any supporting documentation relied upon by Michigan Sugar.

13.4 The DEQ shall serve its Statement of Position within forty-five days after receiving Michigan Sugar's Statement of Position. The DEQ's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the DEQ's position and any supporting documentation relied upon by the DEQ. The DEQ's Statement of Position shall be binding on Michigan Sugar unless Michigan Sugar files a motion for judicial review of the dispute in accordance with the following Paragraph.

13.5 Michigan Sugar may seek judicial review of the dispute by filing with the Court and serving on the DEQ, in accordance with Section XI (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty days after receipt of the DEQ's Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Michigan Sugar's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested, and any schedule within which the dispute must be resolved to insure orderly implementation of this Consent Judgment.

13.6 The DEQ shall respond to Michigan Sugar's motion within the time period allowed by the Michigan Court Rules.

13.7 Standard of Review. In any dispute regarding this Consent Judgment (including its appendices) for which Michigan Sugar seeks judicial review pursuant to Paragraph 13.5, the provisions, clauses, terms, and conditions contained in this

Consent Judgment (including its appendices) shall be reviewed according to applicable principles of law.

13.8 The invocation of dispute resolution procedures under this Section XIII (Dispute Resolution) shall not of itself extend or postpone any obligation of Michigan Sugar under this Consent Judgment, unless and until final resolution of the dispute so provides. Notwithstanding the invocation of the dispute resolution procedures, stipulated penalties, with any applicable interest, shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that Michigan Sugar does not prevail on the disputed issue, stipulated penalties and any applicable interest shall be paid within ten calendar days in the manner provided for in Paragraph 14.24 of this Consent Judgment. Michigan Sugar shall not be assessed stipulated penalties for disputes resolved in its favor.

XIV. STIPULATED PENALTIES

14.1 Michigan Sugar shall be liable for stipulated penalties to the DEQ for violations of this Consent Judgment (including its Appendices) as specified below, unless excused under Section XII (Force Majeure). Stipulated penalties that accrue per day of violation of a Paragraph's requirements shall accrue as a single violation for all violations of that Paragraph's requirements that occur in one calendar day.

14.2 Late Payment of Civil Fine. If Michigan Sugar fails to pay the civil fine required to be paid under Paragraph 8.1 when due, then Michigan Sugar shall pay a stipulated penalty of \$2500 per day for each day that the payment is late.

14.3 The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraphs 5.3, 5.4, 5.6, 5.7, 5.9, 5.12, 5.15, and 5.27(a) and (b):

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|---|
| \$1200 | 1 st through 2 nd consecutive day |
| \$1600 | 3 rd through 5 th consecutive day |
| \$2000 | 6 th consecutive day and beyond |

Notwithstanding the foregoing, if multiple violations of the requirements of Paragraph 5.6 arise from or relate to a common cause, event, or occurrence, any and all such violations occurring on a day shall be deemed to constitute a single violation for purposes of the amount of stipulated penalties that shall accrue for that day.

14.4 The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraphs 5.5, 5.8, 5.10, 5.11, 5.18(b), 5.20, 5.22, and the requirement in Paragraph 5.1 that Michigan Sugar shall operate and maintain the Hydrogen Peroxide System for the Flume Ponds pursuant to the operating requirements in the Operations Plan:

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|---|
| \$750 | 1 st through 2 nd consecutive day |
| \$1250 | 3 rd through 5 th consecutive day |
| \$1500 | 6 th consecutive day and beyond |

14.5 The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraphs 5.14, 5.17, 5.18(a), and 5.19:

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|---|
| \$500 | 1 st through 2 nd consecutive day |
| \$750 | 3 rd through 5 th consecutive day |
| \$1000 | 6 th consecutive day and beyond |

14.6 The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraph 5.16 and the Operations Plan to remove solids from the rumble strips at least once every 24 hours when truck traffic is occurring on the Internal Road and to remove solids more frequently as needed to maintain the rumble strips' effectiveness at removing dirt from truck tires:

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|---|
| \$500 | 1 st through 2 nd consecutive day |
| \$750 | 3 rd through 5 th consecutive day |
| \$1000 | 6 th day and consecutive beyond |

14.7 The following stipulated penalties shall accrue per week of violation of each of the requirements in Paragraph 5.16 and the Operations Plan to inspect the rumble strips on a weekly basis for damage and promptly repair any damaged rumble strips:

| <u>Penalty Per Violation</u> | <u>Period of Noncompliance</u> |
|------------------------------|---|
| \$750 | 1 st week |
| \$1000 | 2 nd consecutive week and beyond |

14.8 A stipulated penalty of \$500 per day shall accrue for all violations of Paragraph 5.21 that occur in one calendar day.

14.9 The following stipulated penalties shall accrue per day of violation of a daily limit in the NPDES Permit, Part I, Section A.1 (Final Effluent Limitations for Monitoring Point 005A) as required by Paragraph 5.23:

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|---|
| \$750 | 1 st through 2 nd consecutive day |
| \$1250 | 3 rd through 5 th consecutive day |
| \$1500 | 6 th consecutive day and beyond |

Notwithstanding the foregoing, if multiple violations of a daily limit that arise from or relate to a common cause, event, or occurrence, any and all such violations occurring on a day shall be deemed to constitute a single violation for purposes of the amount of stipulated penalties that shall accrue for that day.

14.10 The following stipulated penalties shall accrue per month of violation for each violation of a monthly limit in the NPDES Permit, Part I, Section A.1 (Final Effluent Limitations for Monitoring Point 005A) as required by Paragraph 5.23:

| <u>Penalty Per Violation</u> | <u>Period of Noncompliance</u> |
|------------------------------|---|
| \$1000 | 1 st monthly violation |
| \$1250 | 2 nd consecutive monthly violation |
| \$1500 | 3 rd consecutive monthly violation and beyond |

14.11 A stipulated penalty of \$500 per violation shall accrue for each violation of Paragraph 5.24, provided, however, that no stipulated penalties shall accrue for a violation of the requirement in Section III(A)(4) of the Operations Plan for Michigan Sugar to submit to the DEQ a revised preventative maintenance and malfunction abatement plan, and Michigan Sugar shall not be subject to a stipulated penalty for failure to report an item of information when a stipulated penalty is assessed for the failure to keep a record of the same item.

14.12 The following stipulated penalties shall accrue per day of violation for each day that Michigan Sugar fails to timely submit a semi-annual report pursuant to Paragraph 7.1:

| <u>Penalty Per Day of Violation</u> | <u>Period of Noncompliance</u> |
|-------------------------------------|--|
| \$500 | 1 st through 10 th consecutive day |
| \$1250 | 11 th consecutive day and beyond |

14.13 A stipulated penalty of \$2500 shall accrue for all violations of Paragraph 7.1(a) and Paragraph 7.1(b) for each semi-annual report.

14.14 A stipulated penalty of \$500 shall accrue for all violations of Paragraph 7.2 for each semi-annual report.

14.15 A stipulated penalty of \$1000 shall accrue for each violation of Paragraph 7.3.

14.16 Stipulated Penalties for Supplemental Environmental Projects

a. Subject to subparagraph b below, if Michigan Sugar fails to satisfactorily complete either of the Supplemental Environmental Projects identified in Section IX and Appendix E by the applicable deadlines set forth therein, then Michigan Sugar shall pay a stipulated penalty of \$1500 per day for each day after the deadline.

b. If Michigan Sugar fails to expend the entire amount of the required expenditure for either of the Supplemental Environmental Projects identified in Section IX and Appendix E but otherwise has satisfactorily completed the project, then Michigan Sugar shall pay a stipulated penalty equal to 125% of the difference between the required expenditure for the project and any eligible project dollar amounts expended to implement the project in accordance with Section IX and Appendix E, as applicable, unless the failure to expend the entire amount is caused by a force majeure event as determined in accordance with Section XII

(Force Majeure), in which case Michigan Sugar shall pay a stipulated penalty equal to 100% of the difference between the required expenditure and any eligible project dollar amounts expended to implement the project.

14.17 A stipulated penalty of \$10,000 per year shall accrue for any and all violations of the requirement in Paragraph 5.1 that Michigan Sugar shall operate and maintain the Centrifuges pursuant to the operating requirements in the Operations Plan.

14.18 A stipulated penalty of \$3000 per year shall accrue for each violation of the requirements in Paragraphs 5.13 and 5.25.

14.19 A stipulated penalty of \$500 per day shall accrue for each violation of the requirements in Paragraph 10.2.

14.20 Demand for Stipulated Penalties. The DEQ may seek stipulated penalties under this Section XIV (Stipulated Penalties) by sending a written demand for the payment of stipulated penalties to Michigan Sugar. A written demand by the DEQ for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates; the stipulated penalty amount that the DEQ is demanding for each violation; the calculation method underlying the demand; and the grounds upon which the demand is based. The DEQ may waive stipulated penalties or reduce the amount of stipulated penalties it seeks in the unreviewable exercise of its discretion.

14.21 Time for Demand for Stipulated Penalties. Any written demand by the DEQ for the payment of stipulated penalties for violations that occur within a Semi-

Annual Reporting Period shall be made within 90 days after the DEQ receives a complete semi-annual report for that Semi-Annual Reporting Period pursuant to Section VII (Semi-Annual Reports). Michigan Sugar shall not be subject to any liability for stipulated penalties to the extent that any written demand is made more than 90 days after the applicable Semi-Annual Reporting Period.

14.22 Stipulated Penalty Accrual. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs, whichever is applicable, and will continue to accrue until performance is satisfactorily completed or the violation ceases, whichever is applicable. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Judgment.

14.23 Stipulated Penalty Due Date. Stipulated penalties shall be paid no later than 30 days after receipt of a written demand by the DEQ unless the demand is subject to Section XIII (Dispute Resolution).

14.24 Manner of Payment of Stipulated Penalties. Michigan Sugar shall pay stipulated penalties in the manner set forth in Paragraph 8.1. All transmittal correspondence shall state that the payment is for stipulated penalties and shall identify the violations for which the stipulated penalties are being paid.

14.25 Disputes over Stipulated Penalties. By no later than 30 days after receipt of a written demand for stipulated penalties, Michigan Sugar may dispute liability for any or all stipulated penalties demanded by invoking the dispute resolution procedures of Section XIII (Dispute Resolution). In the event of a dispute over stipulated penalties, stipulated penalties shall continue to accrue as provided

in Paragraphs 14.2 through 14.19 during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of the DEQ that is not appealed to the Circuit Court, then Michigan Sugar shall pay accrued penalties determined to be owing, together with interest, to the DEQ within 30 days of the effective date of the agreement or the receipt of the DEQ's decision.

b. If the dispute is appealed to the Circuit Court and the DEQ prevails in whole or in part, then Michigan Sugar shall pay all accrued stipulated penalties determined by the Circuit Court to be owing, together with interest, within 30 days of receiving the Circuit Court's decision or order, except as provided in subparagraph c below.

c. If either Michigan Sugar or the DEQ appeals the Circuit Court's decision, then Michigan Sugar shall pay all accrued stipulated penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

14.26 To insure timely payment of any stipulated fines that become due pursuant to this Section XIV (Stipulated Penalties), Michigan Sugar shall pay an interest penalty to the DEQ each time it fails to make a complete or timely payment. This interest penalty shall be based on a rate that is one percent plus the average interest rate paid at auctions of 5-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and using the full increment of the amount

due as principal, calculated from the due date specified in this Consent Judgment until the date that the delinquent payment is finally paid in full. Payment of an interest penalty by Michigan Sugar shall be paid manner set forth in Paragraph 8.1. Interest payments shall be applied first towards the most overdue amounts or outstanding interest penalty owed by Michigan Sugar before any remaining balance is applied to a subsequent payment amount or interest penalty.

14.27 The provisions of this Section XIV (Stipulated Penalties) shall not bar the DEQ from seeking any additional remedies or sanctions available to them for any violation of this Consent Judgment, or any other provision of applicable law.

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

XV. RECORD RETENTION

15.1 Until five years after the termination of this Consent Judgment, Michigan Sugar shall retain, and shall instruct its contractors, agents, and representatives to preserve, all non-identical copies of records, documents, or other information (including records, documents, or other information in electronic form) in its or its contractors', agents', or representatives' possession or control that

materially relate in any manner to Michigan Sugar's performance of its obligations under this Consent Judgment.

XVI. GENERAL PROVISIONS

16.1 Third Parties. This Consent Judgment does not limit or affect the rights of Michigan Sugar or the DEQ against any third parties.

16.2 Severability. Should any provision of this Consent Judgment be declared by a court of competent jurisdiction to be inconsistent with state or federal law and, therefore, unenforceable, the remaining provisions shall remain in full force and effect.

16.3 Modification. The terms of this Consent Judgment, including any attached appendices, may be modified by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to this Consent Judgment, it shall be effective only upon approval by the Court. No Party may file a motion with the Court for a modification of this Consent Judgment without first having made a good faith effort to reach agreement with the other Party on the terms of any such modification. If Michigan Sugar files a motion for a modification to this Consent Judgment to modify or replace any equipment, technology, process, or procedure referenced in this Consent Judgment, then the Court shall grant the motion if Michigan Sugar demonstrates by a preponderance of the evidence that the modified or replacement equipment, technology, process, or procedure is equally as effective or more effective than the existing equipment, technology, process, or procedure at controlling odors, complying with the NPDES Permit, Part 1, Section

A.1 (Final Effluent Limitations, Monitoring Point 005A), or preventing trucks tracking out dirt from the Beet Piling Grounds that causes receiving waters to contain unnatural turbidity, color, oil films, floating solids, foams, settleable solids, suspended solids, or deposits. If the DEQ files a motion for a modification to this Consent Judgment, then Michigan Sugar shall have the right to assert any and all rights, claims, and defenses, including, but not limited to, any rights, claims, and defenses pursuant to the Michigan Agricultural Processing Act, MCL 289.821 *et seq.*, the Michigan Right to Farm Act, MCL 286.471 *et seq.*, and the Michigan Administrative Procedure Act, MCL 24.201 *et seq.*

16.4 Other Laws. This Consent Judgment in no way affects Michigan Sugar's or the DEQ's responsibility to comply with any other applicable state, federal, or local laws or regulations, or with any order of this or any other court, including without limitation, any amendments to Part 31 of NREPA, Part 55 of NREPA, or their rules.

16.5 Settlement. The entry of this Consent Judgment by Michigan Sugar is not an admission of liability with respect to any issue raised in the Complaint, nor is it an admission of any fact or recital alleged therein. Michigan Sugar maintains that it is not liable for civil fines or injunctive relief nor has it committed any violations of law or created any public nuisance. Michigan Sugar is agreeing to the obligations imposed by this Consent Judgment solely to settle disputed claims without incurring the time and expense of contested litigation. This Consent Judgment is in full settlement and satisfaction of all matters alleged in the

Complaint. This Consent Judgment also resolves the following claims and allegations of the DEQ against Michigan Sugar for the period from the date the Complaint was filed in this case until June 1, 2019, or the date that is 21 days after the DEQ approves the Dissolved Oxygen Profile Report pursuant to the Dissolved Oxygen Sampling Plan, whichever is later: alleged violations of Rule 901 and public nuisances created by the emission of odors from the Bay City Facility. In addition, this Consent Judgment resolves the following claims and allegations of the DEQ against Michigan Sugar for the period from the date the Complaint was filed in this case until August 15, 2019: alleged violations of the NPDES Permit, Part 1, Section A.6 (Storm Water Pollution Prevention Plan).

16.6 This Consent Judgment and its appendices represent a compromise of disputed claims by the Parties for the purposes of reaching a settlement and are subject to Michigan Rule of Evidence 408.

16.7 If the DEQ amends any count of the Complaint under the terms of this Consent Judgment, files a new action against Michigan Sugar, or initiates an administrative enforcement action against Michigan Sugar, then Michigan Sugar retains the right to assert any and all rights, claims, and defenses, including, but not limited to, any rights, claims, and defenses pursuant to the Michigan Agricultural Processing Act, MCL 289.821 *et seq.*, the Michigan Right to Farm Act, MCL 286.471 *et seq.*, and the Michigan Administrative Procedure Act, MCL 24.201 *et seq.*

XVII. TERMINATION

17.1 This Consent Judgment shall terminate ten years after the Effective Date provided that Michigan Sugar submits to the DEQ a written request to terminate the Consent Judgment. This written request shall include a summary of the activities performed to comply with the provisions of the Consent Judgment, certify that the civil fine and any stipulated penalties owed to the DEQ under Section VIII and Section XIV of this Consent Judgment have been paid in full, and that Michigan Sugar is in full compliance with all other provisions of the Consent Judgment. Thereafter, provided full compliance with the provisions of the Consent Judgment has been achieved, the DEQ shall file with the clerk a Satisfaction of Judgment pursuant to MCR 2.620(1).

XVIII. RETENTION OF JURISDICTION

18.1 Prior to the termination of this Consent Judgment under Paragraph 17.1, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Consent Judgment, to assess stipulated fines, to resolve disputes arising under its terms, or to take any action necessary or appropriate for construction or implementation of this Consent Judgment.

XIX. APPENDICES

19.1 The following Appendices are attached to and part of this Consent Judgment:

Appendix A – Maps of Bay City Facility

Appendix B – Dissolved Oxygen Sampling Plan

Appendix C – Operations Plan

Appendix D – Description of Cover for the Outer Pond

Appendix E – Supplemental Environmental Projects

All of the provisions of this Consent Judgment (including its Appendices) shall be treated as terms and conditions of this Consent Judgment.

IT IS SO ORDERED THIS 28 day of December, 2018.


CLINTON CANADY III


Honorable Clinton Canady, III
Circuit Court Judge

STIPULATION

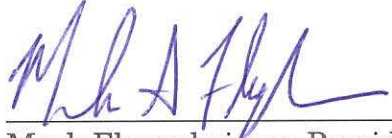
The Parties hereby stipulate to the entry of this Consent Judgment.

FOR PLAINTIFF Michigan Department of Environmental Quality,

By:  Dated: 12, 27, 2018
C. Heidi Grether, Director
Michigan Department of Environmental Quality

By:  Dated: December 27, 2018
Zachary C. Larsen (P72189)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
Michigan Department of Attorney General

FOR DEFENDANT Michigan Sugar Company

By:  Dated: 12/21, 2018
Mark Flegenheimer, President
Michigan Sugar Company