

December 13, 2016

Ms. Sharon LeBlanc
Department of Environmental Quality
401 Ketchum St., Suite B
Bay City, MI 48708

Subject: Michigan Sugar Company's response to multiple Rule 901 Violation Notices

Dear Ms. LeBlanc:

I am writing on behalf of Michigan Sugar Company ("MSC" or the "Company") with regard to Violation Notices issued to the Company alleging violations of Rule 336.1901 of the Michigan Administrative Code ("Rule 901") relating to odors allegedly emanating from MSC's Bay City processing plant, located at 2600 South Euclid Avenue in Bay City, Michigan (the "Bay City Facility"). MSC disputes the violations alleged by the Michigan Department of Environmental Quality (the "MDEQ") in Rule 901 violation notices issued to the Company (collectively, the "Violation Notices"). As MSC has previously communicated to the MDEQ, it has not been our practice to respond to Violation Notices because MSC disputes the validity, enforceability and applicability of Rule 901, and because the Violation Notices do not provide objective or measurable data that MSC can evaluate to determine the merit of any alleged violations of Rule 901.

Notwithstanding the foregoing, MSC respectfully notes the following objections to the Violation Notices issued by the MDEQ for its Bay City Facility¹:

1. The Violation Notices do not provide objective data or information regarding to the alleged odors from the Bay City Facility. The broadly summarized subjective perceptions of AQD staff that are contained in the Violation Notices do not allow MSC to evaluate alleged odor violations.
2. The MDEQ does not inform MSC prior to conducting odor evaluations, which deprives MSC of the ability to conduct contemporaneous observations.

¹ The Violations Notices do not request a written response (nor is MSC obligated under applicable provisions of Rule 901 to issue a response to the alleged violations); however, because Violation Notices issued by the MDEQ invite MSC to provide additional information to refute observations or statements in the Violation Notices MSC believes it is appropriate to address its objections (many of which have already been communicated to the agency in prior discussions).

Furthermore, Violation Notices are often provided to the Company days after the alleged violation have occurred. As a result, the procedure employed by the MDEQ violates MSC's due process rights to test, explain or refute evidence submitted against it by the agency.

3. The MDEQ has not provided MSC with information or guidance regarding the methodology employed by the agency to determine when a violation has occurred.
4. The Violation Notices reference a test purportedly employed by the MDEQ to determine whether a Rule 901 violation has occurred (discussing the frequency, duration and intensity of odors). MSC notes that the above-referenced test constitutes a rule, which has not been incorporated into Rule 901 as required by the Michigan Administrative Procedures Act.
5. The MDEQ has not documented the frequency, duration and intensity of odors from the Bay City Facility that form the basis of alleged violations. The Violation Notices received by MSC broadly opine that odors from the Bay City are of a sufficient frequency, duration, and intensity to constitute a violation of Rule 901, but fail to specify the alleged frequency, duration or intensity that was actually observed by the MDEQ.
6. To the extent that the MDEQ has made findings necessary to determine the frequency, duration or intensity of odors that constitutes a violation of Rule 901, the agency has not properly promulgated rules to establish such limits or even specified metrics for the frequency, duration or intensity of odors that are deemed objectionable to the agency.
7. The Violation Notices issued by the MDEQ indicate that in the professional judgment of AQD staff, the odors observed "were of a sufficient frequency, intensity and duration so as to constitute a violation of Rule 901 (and General condition number 12 of ROP number MI-ROP-B1490-2011b)." However, the Violation Notices fail to document several factors that would appear to be essential to any determination under its own test, including:
 - a. The frequency of odors observed by the MDEQ during the odor evaluation;
 - b. The duration of odors observed by the MDEQ during the odor evaluation;
 - c. The intensity of odors observed by the MDEQ during the odor evaluation;
 - d. The weather conditions at the facility during the odor evaluation;
 - e. The locations at which odor evaluation observations were conducted;
 - f. The procedures undertaken to rule out other off-site sources of odors; and
 - g. The procedures undertaken to identify the specific source of the observed odors.
8. The Violation Notices reference a test utilized by the MDEQ (frequency, duration, intensity) to determine whether a Rule 901 violation has occurred (purportedly

analyzing the frequency, duration and intensity of odors). MSC notes that the above-referenced test has not been incorporated into Rule 901 as required by the Michigan Administrative Procedures Act.

9. MSC disputes that odors from the Bay City Facility constitute an unreasonable interference with the comfortable enjoyment of life and property.
10. The Bay City Facility is a "processing operation" that is entitled to protection from nuisance complaints and alleged odor violations pursuant to the Michigan Agricultural Processing Act ("MAPA"). The investigation of nuisance complaints relating to alleged odors the Bay City Facility has not been performed consistent with the requirements of MAPA.
11. Some portions of the Bay City Facility constitute "farm operations" that are entitled to protection from nuisance complaints and alleged odor violations pursuant to the Michigan Right to Farm Act (the "MFRA"). The investigation of nuisance complaints relating to alleged odors the Bay City Facility has not been performed consistent with the requirements of the MFRA.

In addition to foregoing objections, MSC reserves all rights, claims and defenses that it has or may have to challenge the factual allegations contained in the Violation Notices and/or the validity, enforceability and applicability of Rule 901, including, but not limited to any and all defenses that it may have pursuant to MAPA and/or the MFRA. Notwithstanding the foregoing, MSC remains committed to working with the MDEQ to resolve concerns relating alleged odors from the Bay City plant. Please contact me to discuss any questions or comments you may have.

Sincerely,

Steven Smock, Environmental Manager

cc: G. Witzgall
D. Noble
M. Eugster, Varnum