

Ms. Kathy Brewer
EGLE-AQD
401 Ketchum Street
Bay City, Michigan 48708

October 1, 2020

Subject: Response To Violation Notice No. VN-20200915
MI-ROP-B1493-2016
Michigan Sugar Company – Bay City Factory

Dear Ms. Brewer:

Michigan Sugar Company (MSC) respectfully submits this response to the Violation Notice (VN) issued by the Michigan Department of Environmental, Great Lakes and Energy (EGLE) on September 15, 2020. In that VN, EGLE alleged a violation of Rule 901 and MI ROP-B1493-2016 General Condition 12 based on alleged odors from a farm in the vicinity of MSC's Bay City Facility. MSC disputes the alleged violation for the reasons set forth below:

1. **EGLE failed to identify with any specificity the location of the farm at issue.** The VN does not provide an address or precise location for the farm at which the violation allegedly occurred. Based on telephone discussions with the agency, MSC is aware of the location. To the extent that EGLE is not already aware, MSC wishes to clarify that it does not own the farm at issue.
2. **MSC did not perform land application of solids at the site in question.** MSC arranges for land application of solids through an independent contractor, Michigan Agribusiness Solutions (MAS). MAS selects appropriate sites for land application. MSC does not believe it is appropriate for the agency to issue a VN to MSC for alleged odor violations based on the actions of third parties notwithstanding whether solids that happen to be from an MSC facility were a potential source of odors.
3. **MSC disputes that odors from the farm in question violated Rule 901 or related permit conditions.** EGLE staff notified MSC on September 8, 2020 they had received numerous odor complaints over the past 48 hours and an odor survey was going to be performed. Since the odor survey did not begin until 6pm on September 8, 2020; no representatives from MSC accompanied the EGLE representative.

EGLE notified MSC on September 9, 2020 that a violation notice would be issued pursuant to Rule 901 for a farm in vicinity of the MSC Bay City Plant. During telephone conversations, EGLE staff acknowledged that no objectionable odors were observed during the September 8 odor survey that it conducted in the general vicinity of the stockpiled soils.¹ Nevertheless, EGLE allegedly determined the stockpiled soil generated objectionable odors at an offsite location (allegedly a subdivision west of MSC). As an initial matter, logic dictates that an alleged odor source that does not generate objectionable odors on site cannot generate objectionable odors at an offsite location.

¹ Representatives from MSC and MAS visited the farm containing the stockpiled soil on September 9, 2020 and did not identify objectionable odors at the stockpiled soil or in the immediate vicinity of it.

Moreover, any odors generated at the farm site would only be diluted as they travel downwind. Thus, we find unconvincing any argument that there were objectionable odors sufficient to justify a Rule 901 violation at an offsite location, when there were no such odors at the site that allegedly generated such odors.

In summary, MSC does not believe the odor survey that purportedly identified the alleged violation was performed consistent with proper practices and procedures (to the extent that such practices or procedures exist). MSC has previously informed the agency on numerous occasions the process employed by the agency for identifying violations of Rule 901 is not scientifically valid. Notwithstanding the foregoing, any alleged odor violation should at the very least be able to identify nuisance odors at the site that is alleged to cause a Rule 901 violation. If EGLE believes that it has valid evidence to support its conclusion that a Rule 901 violation occurred, MSC respectfully requests the agency provide such information at its earliest convenience.

4. **On information and belief EGLE's investigation of the odor complaint in question directly violated the Michigan Right to Farm Act (MCL 286.471 et seq), and also failed to follow the procedure set forth in that statute.** The VN asserts the odors that resulted in the alleged Rule 901 violation originated in fields at a farm in the vicinity of the MSC facility. That farm, like every other farm, is entitled to protection pursuant to the Michigan Right to Farm Act. Pursuant to the Michigan Right to Farm Act, the Michigan Department of Agriculture and Rural Development (MDARD) is responsible for the investigation of odor complaints involving a farm. See MCL 286.474(1), which provides as follows:

*(1) Subject to subsection (2), the [MDARD] director shall investigate **all complaints involving a farm or farm operation, including, but not limited to, complaints involving** the use of manure and other nutrients, agricultural waste products, dust, noise, **odor**, fumes, air pollution, surface water or groundwater pollution, food and agricultural processing by-products, care of farm animals, and pest infestations.*

The Right to Farm Act does provide for a Memorandum of Understanding between MDARD and EGLE for the investigation of certain complaints, however, all investigations must be conducted in accordance with the Memorandum of Understanding pursuant to See MCL 286.474(2), which provides as follows:

*(2) The commission and the director shall enter into a memorandum of understanding with the director of the department of environmental quality. **The investigation and resolution of environmental complaints concerning farms or farm operations must be conducted in accordance with the memorandum of understanding.***

In fact, MDARD and EGLE have entered into a Memorandum of Understanding, which is attached hereto as **Exhibit A**. The Memorandum of Understanding provides that both MDARD and EGLE will adhere to the MDEQ Air Quality Division/MDA RTF Program Procedure for Handling Air Quality and Odor Complaints. A copy of the MDEQ Air Quality Division/MDA RTF Program Procedure for Handling Air Quality and Odor Complaints is attached hereto as **Exhibit B**.

The MDEQ Air Quality Division/MDA RTF Program Procedure for Handling Air Quality and Odor Complaints expressly provides a process for the investigation of odor complaints at farms:

- **RTF staff is responsible for investigating and resolving all new odor complaints regarding farms.** The complaint information should be referred to MDA.
- RTF staff will conduct an investigation and inspection per RTF Environmental Complaint Response Protocol. **RTF staff will make a determination as to whether or not the farm is conforming to GAAMPs.**
- If the farm operation conforms to GAAMPs, the file will be closed. **If the farm operation is not in conformance with GAAMPs and does not make the necessary changes to come into conformance with GAAMPs, the RTF supervisor will contact the appropriate MDEQ AQD district supervisor and multi-media coordinator, to apprise them of the situation.** If there are additional environmental concerns at the farm that are affecting media other than air, the multi-media coordinator will inform the appropriate DEQ district supervisor(s). A joint inspection will be scheduled and conducted by staff from RTF, AQD and other divisions as the situation dictates.
- Following the joint inspection, if the farm operation is in conformance with GAAMPs, the file will be closed. **If the farm is still out of conformance with GAAMPs, RTF may refer the farm to AQD.** Upon receipt of the written referral, AQD becomes the lead agency and future odor complaints are the responsibility of AQD. MDA will notify the Michigan Commission of Agriculture of all complaints referred to MDEQ.
- **AQD district office staff are responsible for investigating and resolving odor complaints about a farm referred to AQD by RTF because the farm is not in conformance with GAAMPs.** All complaints should be referred to the appropriate AQD district office for follow up and resolution.

In summary, RTF staff at MDARD are responsible for investigating odor complaints at farms. AQD only has authority to investigate an odor complaint if and when MDARD refers the complaint to AQD. A referral can only be made after MDARD RTF staff has made a determination that a farm is not in compliance with GAAMPs, and also determined that it has failed to make corrections necessary to come into compliance with GAAMPs.

To MSC's knowledge, MDARD has not been involved in the investigation of the odor complaint that resulted in the VN, nor has MDARD referred this matter to AQD for further investigation.² Based on the foregoing, MSC disputes the alleged violation on the basis that EGLE failed to follow the procedure dictated by the Michigan Right to Farm Act.

Notwithstanding the foregoing, MSC desires to cooperate with EGLE to the extent possible. MSC has instructed its independent contractors to take all appropriate steps to reduce odor during the land application of solids. Please feel free to contact me directly should you wish to discuss this matter further.

² If MDARD has referred this matter to EGLE please provide any documentation that a referral occurred, including the date of such referral.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric M. Rupprecht". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eric M. Rupprecht, PE
Environmental Engineer

Attachments:

- Exhibit A: MDARD/EGLE Memorandum of Understanding
- Exhibit B: MDEQ Air Quality Division/MDA RTF Program Procedure for Handling Air Quality and Odor Complaints

Cc: Chris Hare, EGLE Air Quality Division - District Supervisor

Ec: Kelly Scheffler, MSC – Bay City Factory Manager
Steve Smock, MSC – Environmental Manager
Matthew Eugster, Varnum
Matthew Zimmerman, Varnum

MEMORANDUM OF UNDERSTANDING

BETWEEN

MICHIGAN DEPARTMENT OF AGRICULTURE

AND

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Regarding State Agency Response Actions to

Environmental and Nuisance Complaints about Farm Operations

This memorandum between the Michigan Department of Agriculture, hereinafter referred to as MDA, and the Michigan Department of Environmental Quality, hereinafter referred to as MDEQ, is entered into for the purpose of delineating the respective roles and responsibilities regarding state agency response actions to environmental and nuisance complaints about farm operations; and,

WHEREAS, the MDEQ is statutorily and constitutionally charged with the responsibility for the control of the discharge of pollutants into the air, soils, and waters of the State, and the protection of natural resources of the State from pollution, impairment or destruction; and,

WHEREAS, MDA is statutorily charged with the investigation and resolution of environmental and nuisance complaints involving a farm or farm operation; and

WHEREAS, the Michigan Commission of Agriculture, hereinafter referred to as Commission, is statutorily charged with the responsibility for the development and annual review of generally accepted agricultural and management practices for farms and farm operations, hereinafter referred to as GAAMPs; and

WHEREAS, the Michigan Right to Farm Act directs the Commission and the Director of MDA to enter into a Memorandum of Understanding with the Director of MDEQ: and

WHEREAS, MDA and MDEQ recognize the need to protect the air, water, and natural resources of the State from pollution, impairment or destruction while maintaining a viable agriculture industry.

NOW, THEREFORE it is hereby understood that:

MDA will:

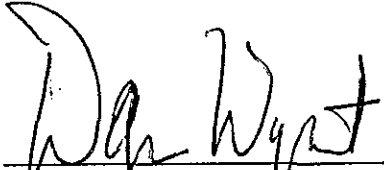
1. Adhere to the following procedures when an environmental or nuisance complaint concerning a farm or farm operation is received by MDA:
 - a. MDEQ Air Quality Division/MDA Right to Farm (RTF) Program Procedure for Handling Air Quality and Odor Complaints.
 - b. MDA RTF Program Water Complaint Response Procedure.
 - c. MDA/MDEQ Waste Complaint Response Procedure.
2. Provide technical assistance to MDEQ and provide testimony as necessary during administrative hearings or litigation regarding farm operations.
3. Notify MDEQ of any potential violation of the Natural Resource and Environmental Protection Act (NREPA).
4. Report at least quarterly to MDEQ on the status of all RTF complaint files open during the reporting period. Provide information about RTF files to MDEQ upon request.
5. Appoint appropriate staff to serve on a joint MDA/MDEQ Agriculture/Environment committee to review and update, as appropriate, MDA and MDEQ Agriculture Environmental Complaint Response Procedures, make recommendations, as appropriate, on matters relating to environmental concerns on farms and farm operations, and foster cooperation between MDA and MDEQ.

MDEQ will:

1. Adhere to the following procedures when an environmental complaint concerning a farm or farm operation is received by MDEQ:
 - a. MDEQ Air Quality Division/MDA RTF Program Procedure for Handling Air Quality and Odor Complaints.
 - b. MDEQ Water Bureau Compliance and Enforcement Management System (CEMS) District Procedures, Procedure 3C – Agricultural Complaint Investigation Procedures.
 - c. MDA/MDEQ Waste Complaint Response Procedure.
2. Water Bureau report at least quarterly to MDA on the status of all environmental compliance and enforcement actions concerning farms or farm operations open during the reporting period. Provide information about farm operation files to MDA upon request.
3. Provide technical assistance to MDA; and provide testimony as necessary during administrative hearings or litigation regarding farm operations.
4. Appoint appropriate staff to serve on a joint MDA/MDEQ Agriculture/Environment committee to review and update, as appropriate, MDA and MDEQ Agriculture Environmental Complaint Response


Procedures, make recommendations, as appropriate, on matters relating to environmental concerns on farms and farm operations, and foster cooperation between MDA and MDEQ.

The MDA and the MDEQ agree to exercise their respective roles and responsibilities, as specified herein, for the purpose of protecting the air, water, and natural resources of the State from pollution, impairment or destruction while maintaining a viable agriculture industry.



Dan Wyant, Director
Michigan Department of
Agriculture

Date: 11-24-04



Steven Chester, Director
Michigan Department of
Environmental Quality

Date: 12-1-04



William Pridgeon, Chair
Michigan Commission of
Agriculture

Date: 12-7-04

Michigan Department of Environmental Quality, Air Quality Division
Michigan Department of Agriculture, Right to Farm Program

Procedure for Handling Agriculture Air Quality and Odor Complaints

Introduction

The Michigan Department of Agriculture (MDA) and the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) are committed to working together to investigate and resolve environmental complaints concerning air quality issues involving livestock, poultry and other farm operations. This procedure, in conjunction with the Memorandum of Understanding between MDA and MDEQ Regarding State Agency Response Actions to Environmental and Nuisance Complaints about Farm Operations (MOU), is intended to improve the efficiency, effectiveness and consistency of both MDA and MDEQ in our individual and joint responsiveness to air quality complaints.

This procedure describes the steps MDEQ AQD and MDA Right to Farm Program (RTF) staff will follow to respond to and resolve farm odor nuisance complaints. The lead agency is responsible for investigating and resolving incoming odor complaints. Lead agency status depends on whether or not MDA has formally referred the farm to MDEQ due to non-conformance with the Generally Accepted Agricultural and Management Practices (GAAMPs). Refer to the attached flowchart for an illustrated layout of the entire procedure.

Staff should record complaint information and send to the appropriate agency. If the complainant prefers, they can call the appropriate department directly to report information on the complaint. All information regarding the complaint should be documented according to established complaint procedures. Please note: MDA will not investigate complaints without the name and address of the complainant and the name and address of the farming operation alleged to be the cause of the complaint.

Odor Complaint Procedure

MDA

1. RTF staff is responsible for investigating and resolving all new odor complaints regarding farms. The complaint information should be referred to MDA.
2. RTF staff will conduct an investigation and inspection per RTF Environmental Complaint Response Protocol. RTF staff will make a determination as to whether or not the farm is conforming to GAAMPs.
3. If the farm operation conforms to GAAMPs, the file will be closed. If the farm operation is not in conformance with GAAMPs and does not make the necessary changes to come into conformance with GAAMPs, the RTF supervisor will contact the appropriate MDEQ AQD district supervisor and multi-media coordinator, to apprise them of the situation. If there are additional

environmental concerns at the farm that are affecting media other than air, the multi-media coordinator will inform the appropriate DEQ district supervisor(s). A joint inspection will be scheduled and conducted by staff from RTF, AQD and other divisions as the situation dictates.

4. Following the joint inspection, if the farm operation is in conformance with GAAMPs, the file will be closed. If the farm is still out of conformance with GAAMPs, RTF may refer the farm to AQD. Upon receipt of the written referral, AQD becomes the lead agency and future odor complaints are the responsibility of AQD. MDA will notify the Michigan Commission of Agriculture of all complaints referred to MDEQ.

Odor Complaint Procedure AQD

1. AQD district office staff are responsible for investigating and resolving odor complaints about a farm referred to AQD by RTF because the farm is not in conformance with GAAMPs. All complaints should be referred to the appropriate AQD district office for follow up and resolution.
2. AQD field inspectors will evaluate odor complaints per internal AQD field procedures.
3. Depending on the compliance status of the referred farm, the farmer may be allowed the opportunity to request a GAAMPs determination from RTF and regain their previous non-referred farm status. These opportunities will occur when one of the below is met:
 - a) **No Violations Cited:** If over several months time, AQD has not cited any violations at the referred farm, they will inform RTF in writing of such. At that time, the farmer may request RTF to make another determination of GAAMPs conformance. AQD will remain the lead agency, until notified in writing from RTF that the farm is in conformance with GAAMPs. At that point, the farm will be considered a non-referred farm and RTF will be the lead agency on future complaints.
 - b) **Violations Cited and Resolved without Escalated Enforcement:** If violations were cited in a Letter of Violation, and the compliance plan submitted to resolve the violations is acceptable to AQD, AQD may request in writing to RTF, that another GAAMPs determination be made at the farm. AQD will remain the lead agency, until notified in writing from RTF that the farm is in conformance with GAAMPs. At that point, the farm will be considered a non-referred farm and RTF will be the lead agency on future complaints.
 - c) **Violations Cited and Resolved with an Entry of a Consent Order or Judgment:** If violations cited in a Letter of Violation are resolved by entering a consent order or judgment, AQD will remain the lead agency for the farm until the order or judgment is terminated. At that time, AQD will inform RTF in writing that the farm is in compliance. At that time, the

farmer may request that RTF make a determination of GAAMPs conformance. AQD will remain the lead agency, until notified in writing from RTF that the farm is in conformance with GAAMPs. At that point, the farm will be considered a non-referred farm and RTF will be the lead agency on future complaints.

Notice of Violation, Permitted, or Enforcement Facilities – Non AQD

If there are odor complaints at a farm operation that is under any DEQ enforcement action, including a notice of violation, permit, or escalated enforcement from another DEQ division other than AQD, MDA will conduct inspections to determine if the farm is in conformance with GAAMPs in accordance with the appropriate procedure.

File name: ESD2/Admin/Agreements/MOU-Farm Oper-Procedures/MDA-AQD complaint procedure 11.09.04