

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

December 28, 2023

Subject: Response to VN 20231212 Dated December 12, 2023
MI-ROP-B1493-2021
Michigan Sugar Company – Bay City Factory

Dear Ms. Brewer:

Michigan Sugar Company (MSC) respectfully submits this response to the December 12, 2023, Violation Notice (VN) issued by the Michigan Department of Environment, Great Lakes and Energy (EGLE). In that VN, EGLE alleged a violation of Rule 901 and MI ROP-B1493-2021 General Condition 12 based on alleged odors in a residential area from "exposed sugar beet processing waste streams" at MSC's Bay City Facility.

The VN indicates that *"In the professional judgment of AQD staff, the odors that were observed on November 3, 2023, were of sufficient intensity, frequency, and duration so as to constitute a violation of Rule 901 of the administrative rules promulgated under Act 451 ("the Act") and General Condition 12 of ROP number MI-ROP-B1493-2021."* Furthermore, EGLE alleges *"on October 22, 2023, while walking along a portion of a public trail east of the MSC BC plant, AQD staff had observed odors characterized by very strong septic mixed with manure and slight lime odor between 4:10 and 5:45 PM. Winds were from the northwest. At approximately 6:00PM, at the intersection of Backus Street and Euclid Avenue, AQD staff verified that odors with the same characteristics as observed on the public trail were present. The MSC BC site was identified as the source of the odors."*

The VN further requests a *"written response to this Violation Notice by January 2, 2024 (which coincides with 21 calendar days from the date of this letter). The written response should include: an explanation of the causes of the violations; actions taken or planned that are necessary to correct the cited violations and the dates by which these actions will take place; and what steps are being taken to prevent a recurrence."*

Before issuing any further response, MSC disputes that a violation occurred. MSC reiterates its long-held position that EGLE has failed to establish any meaningful standards for determining compliance with (or violations of) Rule 901. As a result, *any and all* alleged violations set forth in this VN are premised solely on the subjective perception of the inspector (rather than any scientifically valid approach supported by relevant data), and therefore, MSC disputes such violations. Moreover, EGLE has failed and refused to implement defined standards or protocols for the performance of odor investigations, and therefore, EGLE has not provided relevant information or data in support of alleged violations.

The VN further directs MSC to provide an explanation of the *"process or other conditions that resulted in low water levels in the Outer Pond and Flume Return Pond / South Outer Mud Pond between October 1 and November 30, 2023. MSC BC should also provide the periods when water from sugar beet washing or sugar beet processing bypassed the flume centrifuges, the anaerobic*

digester (Anamet), or the Outer Pond between October 1 and November 30, 2023. The date that the Flume Return Pond / South Outer Mud Pond attained a water level high enough to flow into the Outer Pond should also be included."

The VN further requests, *"For the period of October 1 through November 30, 2023, please provide the MSC BC weekly Environmental record for the Flume Ponds, the USP hydrogen peroxide dosage recommendations, and testing results the USP dosage records were based upon.*

MSC fails to understand (and the VN fails to explain) how the specific information requested is relevant to the alleged violation of Rule 901. The VN does not assert that increased odors were generated by water levels in the mud ponds or as a result of the operation of Centrifuges or the Anamet Digester. Thus, a VN (which alleges a violation of Rule 901) is not the appropriate mechanism for the agency to request unrelated information from MSC. In fact, under the terms of the Consent Judgment much of the requested information (e.g. centrifuge operation, Old Main Pond usage and flume ponds hydrogen peroxide operations) is provided in the Semi-Annual Report.

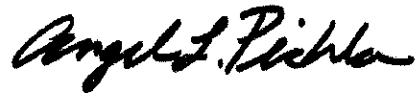
Notwithstanding the foregoing, without acknowledging a violation of Rule 901 (which MSC disputes) MSC can offer the following responses:

- Lower water levels in the Outer Pond and Flume Ponds observed by EGLE were the result of low slice rate (production during campaign). Much of the wastewater generated by the plant is the water used for beet processing. Thus, any reduction in slice rate will result in a corresponding decrease in the volume of wastewater generated. ***Notably, MSC is not required to maintain a minimum amount of wastewater in the ponds under the terms of the Consent Judgment or under applicable law.*
- Flume Centrifuges were taken offline on October 26, 2023 to install the new polymer system. Prior to October 26, 2023, from the beginning of campaign the centrifuges were in operation.
- Neither the Outer Pond nor the Anamet Digester were bypassed between October 4 and November 30, 2023. Flume water was sent to the Old Main Pond from October 1 to October 3, 2023.
- Low water levels in the Outer and South Outer Ponds occurred around November 2 to November 11, 2023. Both ponds began to rise around November 12, 2023.
- MSC has attached USP hydrogen peroxide dosage recommendations, USP testing results and MSC weekly environmental records for Flume Ponds during the requested time.

MSC acknowledges that EGLE may elect to issue a violation notice pursuant to Paragraph 6.2 of the Consent Judgment. MSC notes however there are no stipulated penalties for any alleged odor violations under the terms of the Consent Judgment as it has explicitly disputed alleged odor violations. As you have suggested, the issuance of a VN only triggers a requirement for both parties to meet within 30 days to try to negotiate a resolution of the alleged violations pursuant to Paragraph 6.3 of the Consent Judgment. MSC stands ready and willing to comply with the meeting requirement. Please provide dates in advance of January 11, 2024 (or within 30 days of the issuance of the VN) when EGLE is available to meet. Alternatively, if EGLE is unable to provide mutually agreeable dates prior to January 12, 2024, MSC is willing to extend the timeline for the meeting until January 31, 2024 (with EGLE's mutual written consent consistent with Paragraph 6.3 of the Consent Judgment).

Please feel free to contact me directly should you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink that reads "Angel L. Pichla". The signature is written in a cursive style with a large, prominent initial "A".

Angel L. Pichla
Environmental Superintendent

Notification

ec: Jenine Camilleri, EGLE – Enforcement Unit Supervisor
Jason Kain, MSC – Bay City Factory Manager
Nick Klein, MSC - Vice President of Operations
Meaghan Martuch, MSC – Air Compliance Manager
Eric Rupprecht, MSC – Water & Wastewater Compliance Manager
Matthew Eugster, Varnum
Matthew Zimmerman, Varnum