



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
LANSING



LIESL EICHLER CLARK
DIRECTOR

June 2, 2020

CERTIFIED MAIL 7019 0160 0000 1835 9846

Mr. Eric Rupprecht and Mr. Kelly Scheffler
Michigan Sugar Company
2600 South Euclid Avenue
Bay City, Michigan 48706

Dear Messrs. Rupprecht and Scheffler:

SUBJECT: Demand for Payment of Stipulated Penalties for Violations of Consent Judgment

This letter serves as a written demand for the payment of stipulated penalties in the amount of **\$107,775** for Michigan Sugar Company's violations of the Consent Judgment it entered with the Department of Environment, Great Lakes, and Energy (EGLE) on December 28, 2018, in Ingham County Circuit Court, case number 17-000727-CE.

In the Semi-Annual Report dated March 10, 2020, Michigan Sugar notified EGLE of its compliance with the Consent Judgment for the reporting period of July 1, 2019, through December 31, 2019. This letter identifies the violations of the Consent Judgment during that time for which EGLE is hereby demanding payment of stipulated penalties. The specific violations and stipulated penalties are set forth below. This letter also requests additional information.

Hydrogen Peroxide System

Paragraph 5.1 of the Consent Judgment requires Michigan Sugar to operate and maintain the hydrogen peroxide system for the flume ponds pursuant to the operating requirements in the Operations Plan (Appendix C to the Consent Judgment). The Operations Plan requires Michigan Sugar to retain USP to conduct monthly evaluations of the hydrogen peroxide system, at which time USP shall provide recommendations for its proper operation, including the flow rates at which hydrogen peroxide is to be applied to the flume ponds. The Operations Plan also requires Michigan Sugar to operate the hydrogen peroxide system at flow rates consistent with the recommendations of USP.

In Appendix D of the Semi-Annual Report, Michigan Sugar reported at least 78 consecutive days, from October 3 through December 19, 2019, when the flow rates at which hydrogen peroxide was applied to the flume ponds was lower than the flow rate recommended by USP. In letters dated October 2, 2019, and November 1, 2019, USP recommended a hydrogen peroxide flow rate of 20 gallons per hour (GPH). In a letter dated December 6, 2019, USP stated it conducted pond water sampling on

November 14, 2019, that hydrogen peroxide dosing continued at rate of 16.7 GPH, and recommended maintaining the 16.7 GPH rate. In a letter dated January 3, 2020, USP stated it conducted pond water sampling on December 19, 2019, and that it recommended reducing the rate to 10 GPH.

Michigan Sugar, in its weekly environmental logs created on October 2, 9, 16, and 23, 2019, reported that the hydrogen peroxide dosing rate was 16.5 GPH. In its weekly environmental logs created on October 30, November 6, 13, 20, and 28, and December 3, 11, and 17, 2019, Michigan Sugar stated that the hydrogen peroxide dosing rate was 16 GPH. In the weekly environmental log created on December 28, 2019, it stated that the dosing rate was 10 GPH. Michigan Sugar, therefore, operated the hydrogen peroxide system for the flume ponds at flow rates (16.5 and 16 GPH) below the flow rate recommended by USP (20 and 16.7 GPH) for at least 78 consecutive days, from October 3, 2019, through December 19, 2019.

Paragraph 14.3 of the Consent Judgment establishes stipulated penalties for failing to operate and maintain the hydrogen peroxide system for the flume ponds pursuant to the operating requirements in the Operations Plan. The stipulated penalties are \$750 per day of violation for the first through second consecutive day of noncompliance, \$1,250 per day of violation for the third through fifth consecutive day of noncompliance, and \$1,500 per day of violation for the sixth consecutive day of noncompliance and beyond. The 78 consecutive days of violations result in stipulated penalties in the amount of \$114,750. EGLE is exercising its enforcement discretion and reducing the stipulated penalties by 30 percent, to **\$80,325**.

In addition, the Operations Plan requires that Michigan Sugar create and retain records of the hydrogen peroxide flow rates recommended by USP and the flow rates at which hydrogen peroxide is applied to the flume ponds. The Operations Plan also requires that Michigan Sugar include those records in the semi-annual reports. The Semi-Annual Report did not include records of USP's recommendations for July, August, and September 2019, and it appears they were not created. EGLE is exercising its enforcement discretion and is not demanding stipulated penalties for those violations. However, Michigan Sugar is hereby notified that, as required by the Consent Judgment, it needs to create and maintain those records and that future semi-annual reports need to include them.

Further, EGLE requests that Michigan Sugar identify the source of information for the hydrogen peroxide dosage rates in the weekly environmental logs created from October 2, 2019, through December 28, 2019. EGLE also requests that Michigan Sugar explain who implements the hydrogen peroxide rates in the flume ponds and the process Michigan Sugar uses to determine whether the flow rates are consistent with the rates recommended by USP.

Dissolved Oxygen in the Aeration Ponds and Dissolved Oxygen Sampling

Paragraph 5.6 of the Consent Judgment requires Michigan Sugar to maintain in each of the Aeration Ponds a dissolved oxygen concentration of at least 1.0 milligrams per liter (mg/L) pursuant to the Dissolved Oxygen Sampling Plan (Appendix B to the Consent Judgment). The plan requires that Michigan Sugar place continuous dissolved oxygen meters in each pond that measure dissolved oxygen at least once every hour. The plan also requires that Michigan Sugar sample and record the dissolved oxygen concentration of each Aeration Pond and that Michigan Sugar shall be deemed to be in compliance with Paragraph 5.6 if the dissolved oxygen concentration in each of the Aeration Ponds is at least 1.0 mg/L, measured as a calendar day average. The plan further provides that Michigan Sugar may temporarily cease sampling during pond clean out activities and as necessary to maintain, repair, or calibrate the meters.

In Appendix J of the Semi-Annual Report, Michigan Sugar reported five days on which it did not maintain a dissolved oxygen concentration of at least 1.0 mg/L in each Aeration Pond (July 11 and 18, November 25 and 26, and December 10, 2019). Michigan Sugar also asserted force majeure for two additional days (July 5 and 6, 2019) due to an electrical transformer outage. EGLE is exercising its enforcement discretion and is not seeking stipulated penalties for these events. EGLE; however, requests that Michigan Sugar submit a plan for how it will control high strength wastewater discharges to the Aeration Ponds to prevent future violations of the requirement to maintain a dissolved oxygen concentration of at least 1.0 mg/L in each of the Aeration Ponds. Please provide that plan within 30 days from your receipt of this letter.

In addition, Michigan Sugar reported six consecutive days (December 13-18, 2019) when it removed two of three dissolved oxygen meters from the East Aeration Pond for "maintenance of air diffusers" and put them back "after air diffuser membranes replaced." It did not report dissolved oxygen concentrations for the East Aeration Pond on those days.

The removal of dissolved oxygen meters are violations of Paragraph 5.6 of the Consent Judgment. Paragraph 14.3 of the Consent Judgment establishes stipulated penalties for violations of Paragraph 5.6 of \$1,200 per day of violation for the first through the second consecutive day of noncompliance, \$1,600 per day of violation for the third through the fifth consecutive day of noncompliance, and \$2,000 per day of violation for the sixth consecutive day of noncompliance and beyond. The total stipulated penalties are **\$9,200**.

Michigan Sugar also reported 18 consecutive days when one of three dissolved oxygen meters were removed from the West Aeration Pond due to "EDI diffuser replacement" (October 1-18, 2019). It reported dissolved oxygen concentrations greater than 1.0 mg/L in West Aeration Pond on those days. EGLE is exercising its enforcement discretion and is not seeking stipulated penalties for these violations.

NPDES Permit

Michigan Sugar reported an exceedance of the daily effluent limit for BOD5 for Monitoring Point 005A on October 18, 2019. In addition, Michigan Sugar reported 21 days in November and December 2019 on which it exceeded the daily effluent limit for fecal coliform. It also reported that it exceeded the monthly effluent limit for fecal coliform in December 2019. The exceedances are detailed in Exhibit A enclosed with this letter.

These effluent limit exceedances are violations of Part I, Section A.1 of the National Pollutant Discharge Elimination System (NPDES) permit and Paragraph 5.23 of the Consent Judgment. For violations of a daily limit in the NPDES permit, Paragraph 14.9 of the Consent Judgment establishes a stipulated penalty of \$750 per day for the first through second consecutive day of noncompliance, \$1,250 for the third through the fifth consecutive days, and \$1,500 for each consecutive day of noncompliance thereafter. Paragraph 14.10 of the Consent Judgment establishes a stipulated penalty of \$1,000 for the first violation of a monthly effluent limit in the NPDES permit. The total stipulated penalties for the violations detailed in the enclosed Exhibit A are \$25,750.

EGLE acknowledges the explanations that Michigan Sugar provided for the fecal coliform violations and appreciates the effort it expended in trying to reduce the violations. Due to this effort, it appears Michigan Sugar has identified the cause of the violations and now knows what it must do to prevent many of them in the future. Because of this effort, EGLE is exercising its enforcement discretion and is reducing the fecal coliform stipulated penalties of \$25,000 by 30 percent, to \$17,500. Therefore, the total stipulated penalties that EGLE is hereby demanding for the effluent limit violations are **\$18,250**.

In addition, EGLE requests that Michigan Sugar develop and submit to EGLE within 30 days of Michigan Sugar's receipt of this letter a "Process Upset Prevention Plan." The Process Upset Prevention Plan shall include the procedures that Michigan Sugar will follow to route high strength wastewater and spills to various basins and ponds to prevent violations of the Consent Judgment requirements, including complying with NPDES permit effluent limits and the 1.0 mg/L dissolved oxygen requirement for the Aeration Ponds. Please provide that plan with 30 days after you receive this letter.

South Euclid Avenue Catch Basin Cleanout

In Appendix I of the Semi-Annual Report, Michigan Sugar explained that it cleaned out catch basins along South Euclid Avenue and then disposed of the material. EGLE requests that Michigan Sugar identify on the maps provided which catch basins were cleaned out and provide an estimate of the volume of material removed from each catch basin. Please provide that information within 30 days after you receive this letter.

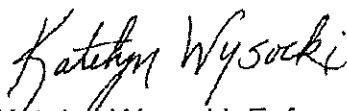
Mechanical Street Sweeper Operating Records

Michigan Sugar provided weekly logs in Appendix H of the Semi-Annual Report identifying when it operated the Mechanical Street Sweeper on South Euclid Avenue. In an e-mail dated March 12, 2020, Michigan Sugar stated that it has contracted with Curbcoco to provide mechanical street sweeping/collection services along South Euclid Avenue, and that Curbcoco provides Michigan Sugar with a written work order that includes the street sweeper brand (i.e. Elgin), street sweeper number, date/time the sweeping occurred and the extent of the sweeping. EGLE requests that Michigan Sugar provide a copy of these records for documentation of street sweeping. Please provide the records within 30 days from your receipt of this letter.

Also enclosed with this letter is an invoice from EGLE for this demand for payment of stipulated penalties. Pursuant Paragraph 14.23 of the Consent Judgment, Michigan Sugar shall pay the stipulated penalty amount of **\$107,775** no later than 30 days after it receives this written demand. Paragraph 14.24 of the Consent Judgment identifies the manner of payment and the information to be included in the transmittal correspondence.

If you need further information regarding this demand for payment of stipulated penalties, please contact me at 517-388-3976; WysockiK@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,



Katelyn Wysocki, Enforcement Specialist
Enforcement Unit
Water Resources Division

Enclosures

cc: Mr. Neil Gordon, Department of Attorney General
Mr. Charles Bauer, EGLE
Mr. Chris Hare, EGLE
Mr. Malcolm Mead-O'Brien, EGLE
Ms. Kathy Brewer, EGLE
Ms. Audrey Schwing, EGLE

Exhibit A - June 2020 Michigan Sugar Company Stipulated Penalty Demand Letter

Date	Parameter	Effluent Limitation		Reported Values	
		Daily Maximum	Monthly Average Maximum	Daily Maximum	Monthly Average Maximum
10/18/2019	BOD5	9000 lbs/day		29000 lbs/day	
11/28/2019	Fecal coliform	400 #/100 ml		684 #/100 ml	
11/29/2019	Fecal coliform	400 #/100 ml		590 #/100 ml	
12/1/2019	Fecal coliform		200 #/100 ml		403 #/100 ml
12/8/2019	Fecal coliform	400 #/100 ml		464 #/100 ml	
12/9/2019	Fecal coliform	400 #/100 ml		629 #/100 ml	
12/10/2019	Fecal coliform	400 #/100 ml		728 #/100 ml	
12/11/2019	Fecal coliform	400 #/100 ml		672 #/100 ml	
12/12/2019	Fecal coliform	400 #/100 ml		672 #/100 ml	
12/13/2019	Fecal coliform	400 #/100 ml		505 #/100 ml	
12/14/2019	Fecal coliform	400 #/100 ml		408 #/100 ml	
12/20/2019	Fecal coliform	400 #/100 ml		559 #/100 ml	
12/21/2019	Fecal coliform	400 #/100 ml		809 #/100 ml	
12/22/2019	Fecal coliform	400 #/100 ml		623 #/100 ml	
12/23/2019	Fecal coliform	400 #/100 ml		698 #/100 ml	
12/24/2019	Fecal coliform	400 #/100 ml		850 #/100 ml	
12/25/2019	Fecal coliform	400 #/100 ml		891 #/100 ml	
12/26/2019	Fecal coliform	400 #/100 ml		976 #/100 ml	
12/27/2019	Fecal coliform	400 #/100 ml		518 #/100 ml	
12/28/2019	Fecal coliform	400 #/100 ml		425 #/100 ml	
12/29/2019	Fecal coliform	400 #/100 ml		760 #/100 ml	
12/30/2019	Fecal coliform	400 #/100 ml		446 #/100 ml	



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
 Water Resources Division
 Enforcement

INVOICE

Issued under authority of Public Act 451 of 1994.
 FED ID # 38-6000134

MICHIGAN SUGAR COMPANY
 MR. MARK S. FLEGENHEIMER, PRESIDENT
 2600 SOUTH EUCLID AVENUE
 BAY CITY, MI 48706
 US

Invoice Number:	761-10511543
Customer Id:	470829
Invoice Date:	June 01, 2020
Total Due:	\$107,775.00

MICHIGAN SUGAR COMPANY
 2600 SOUTH EUCLID AVENUE
 BAY CITY, MI 48706
 US

Failure to submit payment by the date due will result in penalties as described by law. Please be sure to reference the settlement ID# on the check when you remit payment.

Reference
MUL40003

Invoice Item	Qty	Unit Cost	Sales Tax	Total Cost
SETTLEMENT ID# MUL40003	1.00	\$107,775.000	\$0.00	\$107,775.00

Total Invoice: **\$107,775.00**
 Payment Due: July 02, 2020

REMIT PAYMENT TO: **STATE OF MICHIGAN**
 TO ENSURE PROPER CREDIT, SEND THIS PORTION WITH PAYMENT TO:
EGLE - GWDP
CASHIERS OFFICE
PO BOX 30657
LANSING, MI 48909-8157

Reference
MUL40003

INVOICE NUMBER
761-10511543
WRD ACO

(Please note or make any address corrections below.)

MICHIGAN SUGAR COMPANY
 MR. MARK S. FLEGENHEIMER, PRESIDENT
 2600 SOUTH EUCLID AVENUE
 BAY CITY, MI 48706
 US

Total Due: **\$107,775.00**
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