



GRETCHEN WHITMER  
GOVERNOR

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

LANSING



LIESL EICHLER CLARK  
DIRECTOR

May 27, 2021

CERTIFIED MAIL 7020 3160 0000 2065 1669

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 **\$30,000** 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 11, 2021, Michigan Sugar Company notified EGLE of its compliance with the Consent Judgment for the reporting period of July 1, 2020, through December 31, 2020. 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.

Dissolved Oxygen in the Aeration Ponds

Paragraph 5.6 of the Consent Judgment requires Michigan Sugar Company to maintain in each of the Aeration Ponds a dissolved oxygen concentration of at least 1.0 milligram per liter (mg/l) pursuant to the Dissolved Oxygen Sampling Plan (Appendix B to the Consent Judgment). The plan requires that Michigan Sugar Company place continuous dissolved oxygen meters in each pond that measure dissolved oxygen at least once every hour. The plan also requires that Michigan Sugar Company sample and record the dissolved oxygen concentration of each Aeration Pond and that Michigan Sugar Company shall be deemed to be in compliance with Paragraph 5.6 of the Consent Judgment 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 Company 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 Company reported 23 days on which it did not maintain a dissolved oxygen concentration of least 1.0 mg/l in one or more of the Aeration Ponds. EGLE is exercising enforcement discretion for dissolved oxygen violations on four days, August 30 through September 2, 2020, which Michigan Sugar Company believes were attributed to a malfunctioning probe in the New Aeration Pond. Therefore, EGLE is seeking stipulated penalties for 19 of the 23 days of violation of the required dissolved oxygen concentration in the Aeration Ponds.

Michigan Sugar Company asserted a force majeure claim in an e-mail dated January 4, 2021, for dissolved oxygen violations on December 29, 30, and 31, 2020, which Michigan Sugar

Mr. Eric Rupprecht and Mr. Kelly Scheffler  
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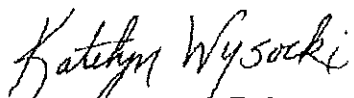
Company stated were due to high strength flume water flowing into a catch basin that was routed to a lift station and pumped to the East and West Aeration Ponds. Michigan Sugar Company attributed the violations to clustered frozen beets causing a flume backup and an overflow of high strength flume water. EGLE requests the following information to evaluate the force majeure claim: whether clustered frozen beets causing a backup in the flume was a unique event or occurs from time to time; how frequently Michigan Sugar Company checks flume operations; how long the flume overflowed; approximately what volume of high strength water overflowed from the flume; what portion of that volume was delivered to the East and West Aeration Ponds; the flow sequence from the lift station to the Aeration Ponds; the corrective action Michigan Sugar Company implemented to resolve the flume blockage; and the measures Michigan Sugar Company has implemented to manage flume operations and prevent a recurrence. Please provide this information to EGLE by June 15, 2021. EGLE is demanding stipulated penalties for these violations and will evaluate Michigan Sugar Company's force majeure claim based on the information it provides.

Paragraph 14.3 of the Consent Judgment establishes stipulated penalties for violations of Paragraph 5.6 of the Consent Judgment 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. EGLE is hereby demanding **\$30,000** in stipulated penalties for the violations of Paragraph 5.6 of the Consent Judgment described in this letter. Please see the enclosed list of dissolved oxygen violations and associated stipulated penalty calculation.

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 Company shall pay the total stipulated penalty amount of **\$30,000** 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 Mr. Malcolm Mead-O'Brien, Environmental Quality Specialist, Enforcement Unit, Air Quality Division, at 517-281-0376 or [MeadM1@Michigan.gov](mailto:MeadM1@Michigan.gov); or you may contact me at 517-388-3976; [WysockiK@Michigan.gov](mailto: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

**Michigan Sugar Company, Bay City Facility Semi-Annual Report for July through December 2020**

Violation Date	POND ACTUAL Dissolved Oxygen Relative to <1.0 mg/l Requirement						Stipulated Penalty	Consent Judgment Compliance Paragraph	Stipulated Penalty Paragraph in the Consent Judgment
	New Main pond DO (mg/l)	Final pond DO (mg/l)	East pond DO (mg/l)	West pond DO (mg/l)	MSC BC Comment	Consecutive Days			
7/19/2020	4	pond cleaning	0.3	0.2	high strength wastewater from desugarization sent to lift station pumped to East & West aeration ponds		\$ 1,200	14.3	5.6
7/20/2020	1.4	pond cleaning	0.3	0.3	same		\$ 1,200	14.3	5.6
7/21/2020	1.2	pond cleaning	0.3	0.2	same		\$ 1,600	14.3	5.6
7/22/2020	0.1	pond cleaning	0.9	0.2	same		\$ 1,600	14.3	5.6
7/23/2020	0.1	pond cleaning	5.8	0.3	same		\$ 1,600	14.3	5.6
7/24/2020	0.1	0.2	7.3	0.4	same		\$ 2,000	14.3	5.6
7/25/2020	0.1	0	7.6	3.1	same		\$ 2,000	14.3	5.6
7/26/2020	0.1	0.2	7.6	4	same		\$ 2,000	14.3	5.6
7/27/2020	0.1	3.8	7.5	4.6	same		\$ 2,000	14.3	5.6
7/28/2020	0.7	4.8	7.4	3.5	same	10	\$ 2,000	14.3	5.6
8/30/2020	0.8	7	6.7	5.8		*	\$ -	14.3	5.6
8/31/2020	0.7	7.1	5.7	5.9	New Pond DO probe cleaned	*	\$ -	14.3	5.6
9/1/2020	0.7	6.9	4.9	5.7		*	\$ -	14.3	5.6
9/2/2020	0.6	6.8	4.5	5.2	New Pond DO probe cleaned	*	\$ -	14.3	5.6
10/3/2020	8.3	8.9	0.8	5.2	Excessive COD load to digester		\$ 1,200	14.3	5.6
10/4/2020	8.1	8.9	0.5	3.9			\$ 1,200	14.3	5.6
10/5/2020	7.9	9.1	0.4	2			\$ 1,600	14.3	5.6
10/6/2020	7.8	8.8	0.6	1.7		4	\$ 1,600	14.3	5.6
12/27/2020	9	10.2	0.7	1.4			\$ 1,200	14.3	5.6
12/28/2020	8.7	9.6	0.8	1.2			\$ 1,200	14.3	5.6
12/29/2020	8.7	10	0.8	0.3			\$ 1,600	14.3	5.6
12/30/2020	7.7	9.8	1	0.8			\$ 1,600	14.3	5.6
12/31/2020	8.5	9.8	1.2	0.6		5	\$ 1,600	14.3	5.6
<b>Total Penalty Calculated:</b>							<b>\$ 30,000</b>		

\* EGLE applied enforcement discretion data indicates DO was >1 mg/l (8/30-9/2/2020)

Summary of Days of Penalty: 23 days > 1.0 mg/l ; 4 days enforcement discretion; 19 days penalty.



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

<b>Invoice Number:</b>	<b>761-10623037</b>
Customer Id:	470829
Invoice Date:	May 26, 2021
<b>Total Due:</b>	<b>\$30,000.00</b>

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# WRD40003 - VIOLATION OF CONSCENT JUDGEMENT	1.00	\$30,000.000	\$0.00	\$30,000.00

**Total Invoice:** **\$30,000.00**

Payment Due: July 01, 2021

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**

<b>INVOICE NUMBER</b>
<b>761-10623037</b>
WRD ACO

(Please note or make any address corrections below.)

MICHIGAN SUGAR COMPANY  
 MR. MARK S. FLEGENHEIMER, PRESIDENT  
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 BAY CITY, MI 48706  
 US

**Total Due:** **\$30,000.00**