



GRETCHEN WHITMER
GOVERNOR

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

LANSING

EGLE

LIESL EICHLER CLARK
DIRECTOR

June 23, 2021

CERTIFIED MAIL 7020 3160 0000 2065 1751

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

Dear Messrs. Rupprecht and Scheffler:

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

This letter serves as a revised written demand for the payment of stipulated penalties in the amount of **\$25,200** 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 (Consent Judgment).

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. EGLE issued a Demand for Payment of Stipulated Penalties for Violations of the Consent Judgment dated May 27, 2021, and provided an opportunity for Michigan Sugar Company to provide supplementary information by June 15, 2021, to support a force majeure claim it had asserted. EGLE has reviewed Michigan Sugar Company's supplementary response dated June 15, 2021, and based upon review of the response, has chosen to exercise some enforcement discretion and hereby demands a stipulated penalty of \$25,200 for Michigan Sugar Company's violations of the Consent Judgment from July 1, 2020, through December 31, 2020. This letter identifies those violations and explains the calculation of the 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 (DO) 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 DO meters in each pond that measure DO at least once every hour. The Plan also requires that Michigan Sugar Company sample and record the DO 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 DO 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 DO concentration of least 1.0 mg/l in one or more of the Aeration Ponds. EGLE is exercising enforcement discretion for DO 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.

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 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 requested additional information to evaluate Michigan Sugar Company's force majeure claim.

In Michigan Sugar Company's correspondence dated June 15, 2021, Michigan Sugar Company provided additional information regarding the December 29 through 31, 2020, high strength flume water overflow event. Specifically, Michigan Sugar Company identified this was not a unique, one-time occurrence, but rather it occasionally occurs when weather and beet conditions are appropriate to create this situation. Michigan Sugar Company identified that a flume operator is present 24 hours a day, seven days a week and monitors the flume operations constantly while the flume is operational and is present to take corrective action when appropriate. These representations do not support the force majeure claim that this was an unusual, unanticipated, unforeseen event. Michigan Sugar Company also stated that it has the capability of controlling the flow of wastewater from the lift station to each of the East and West Aeration Ponds including the amount of the flow that is directed to each of those ponds and alters the amount of flow to each pond from time to time to balance those ponds. However, Michigan Sugar Company but did not explain how the company determines distribution between either pond, and further Michigan Sugar Company identified that it does not have information on the total volume allocated to each aeration pond, or flow rate of the high strength water diversion in this event. Further, Michigan Sugar Company has not shared data from the reporting period following December 30, 2020, to support its claim that the DO levels returned to compliance on and following January 1, 2021. EGLE notes that it did receive odor complaints attributed to Michigan Sugar Company during the first week in January 2021.

As previously stated, EGLE agreed to exercise enforcement discretion for DO violations reported within the Semi-Annual Report as occurring on four days, August 30 through September 2, 2020, which Michigan Sugar Company investigated and believes were attributed to malfunctioning probes in the New Aeration Pond.

EGLE disagrees that the high strength diversion to the East and West Aeration Ponds caused by a cluster of frozen beets was a force majeure event for the reasons identified above.

EGLE encourages Michigan Sugar Company to implement a technologically and/or mechanically enhanced monitoring and valve operating bypass system with an alarm system and with flow metering to better respond to future similar events. With Michigan

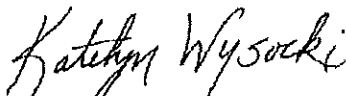
Sugar Company's explained plan to properly monitor the flume system to prevent the discharge of high strength wastewater to the aeration ponds and Michigan Sugar Company developing a high strength load management plan, EGLE has reduced the stipulated demand for the three days involved in this bypass (3 x \$1,600 = \$4,800). Accordingly, EGLE is seeking stipulated penalties for 16 of the 23 days of violation of the required DO concentration in the Aeration Ponds.

Paragraph 14.3 of the Consent Judgment establishes stipulated penalties for violations of Paragraph 5.6 of the Consent Judgement 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. With the enforcement discretion applied, EGLE is hereby demanding **\$25,200** in stipulated penalties for the violations of Paragraph 5.6 of the Consent Judgement.

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 **\$25,200** 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; or you may 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

Enclosure

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 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:	761-10624662
Customer Id:	470829
Invoice Date:	June 22, 2021
Total Due:	\$25,200.00

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# WRD40003 - VIOLATION OF CONSCENT JUDGEMENT	1.00	\$25,200.000	\$0.00	\$25,200.00

Total Invoice: **\$25,200.00**

Payment Due: August 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

INVOICE NUMBER
761-10624662
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: **\$25,200.00**