



GRETCHEN WHITMER  
GOVERNOR

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



AARON B. KEATLEY  
ACTING DIRECTOR

June 13, 2023

VIA EMAIL AND UPS NEXT DAY DELIVERY

Eric Rupprecht, Compliance Manager  
Jason Kain, Factory Manager  
Michigan Sugar Company  
2600 South Euclid Avenue  
Bay City, Michigan 48706

SRN: B1493; Bay County

Dear Eric Rupprecht and Jason Kain:

**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 \$26,750.00 for Michigan Sugar Company's (MSC) violations of the December 28, 2018, Consent Judgment in Ingham County Circuit Court, Case No.17-000727-CE (Consent Judgment) that MSC entered with the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

On March 16, 2023, EGLE received MSC's Semi-Annual Report dated March 15, 2023, for the reporting period of July 1, 2022, through December 31, 2022, (March 15, 2023, Semi-Annual Report), pursuant to the requirements of the Consent Judgment. EGLE's review of the March 15, 2023, Semi-Annual Report identified violations of the Consent Judgment during the reporting period outlined in this letter, for which EGLE is hereby demanding payment of stipulated penalties.

The specific violations and stipulated penalties are set forth below.

**I. VIOLATIONS OF PARAGRAPH 5.23, FINAL EFFLUENT LIMITATIONS**

Paragraph 5.23 of the Consent Judgment requires MSC to meet the final effluent limitations for monitoring point 005A of the National Pollutant Discharge Elimination System Permit, Part 1, Section A.1. Pursuant to Paragraph 14.9 of the Consent Judgment, stipulated penalties for violations of Paragraph 5.23 shall accrue in the following manner: \$750.00 per day of violation for the first and second consecutive day of noncompliance; \$1,250.00 per day of violation for the third through fifth consecutive day of noncompliance; and \$1,500.00 per day of violation for the sixth consecutive day of noncompliance and beyond.

The March 15, 2023, Semi-Annual Report indicates that MSC exceeded the final effluent limitations for regulated parameters (including biochemical oxygen demand, dissolved oxygen and total suspended solids) on December 6, 7, and 8, 2022. As such, EGLE is

demanding stipulated fines of \$2,750.00 for violations of Paragraph 5.23 of the Consent Judgment.

EGLE did not include in the calculated stipulated penalties additional effluent violations reported by the facility in the March 15, 2023, Semi-Annual Report and in the Discharge Management Reports. These additional violations were based on sampling and reporting errors conducted by the facility and, therefore, were not effluent parameter violations subject to stipulated penalties under Paragraphs 5.23 and 14.9

**Section I Summary: EGLE is hereby demanding \$2,750.00 in stipulated penalties for the violations of Paragraph 5.23 of the Consent Judgment.**

## **II. VIOLATIONS OF PARAGRAPH 5.6, AERATION PONDS MANAGEMENT AND HYDROGEN PEROXIDE DOSING**

Paragraph 5.6 of the Consent Judgment requires that MSC maintain a dissolved oxygen concentration in each of the aeration ponds of at least 1.0 milligram per liter as a calendar day average pursuant to the Dissolved Oxygen Sampling Plan. Pursuant to Paragraph 14.3 of the Consent Judgment, stipulated penalties for violations of Paragraph 5.6 shall accrue, as follows: \$1,200.00 for the first and second consecutive day of violation; \$1,600.00 for the third through fifth consecutive day of violation; and \$2,000.00 for the sixth consecutive day and beyond.

The March 15, 2023, Semi-Annual Report identified MSC's failure to maintain the required dissolved oxygen concentrations of the aeration ponds pursuant to the Dissolved Oxygen Sampling Plan on the following dates:

- July 1 through July 8, 2022;
- July 31, 2022;
- August 9, 2022;
- August 18, 2022;
- August 23 through August 24, 2022;
- September 27, 2022;
- November 11 through 12, 2022; and
- November 16, 2022.

As such, EGLE is demanding stipulated fines of \$24,000.00 for violations of Paragraph 5.6 of the Consent Judgment.

**Section II Summary: EGLE is hereby demanding \$24,000.00 in stipulated penalties for the violations of Paragraph 5.6 of the Consent Judgment.**

## **III. VIOLATIONS OF PARAGRAPH 7.1, FLUME PONDS MANAGEMENT AND HYDROGEN PEROXIDE DOSING**

Paragraph 7.1.b. of the Consent Judgment requires MSC to submit Semi-Annual Reports that include information pursuant to the Operations Plan, which is attached as Appendix C

of the Consent Judgment. Subsection III.B.2.a. of the Operations Plan requires MSC to retain third-party vendor USP Technologies (USP) to conduct monthly evaluations of the hydrogen peroxide system for the flume ponds. Subsection III.B.2.b of the Operations Plan requires that MSC maintain recordkeeping including, among other things, USP flume pond testing results for pH and oxidation-reduction potential (ORP). Subsection III.B.2.c of the Operations Plan and Paragraph 7.1.b. of the Consent Judgment requires MSC to submit, among other things, the USP flume pond testing results records in its Semi-Annual Reports. Pursuant to Paragraph 14.13 of the Consent Judgment, a stipulated penalty of \$2,500.00 shall accrue for failure to submit complete information reporting records of USP test results.

No records of USP test results for pH and ORP for the months of November and December 2022, were provided in the March 15, 2023, Semi-Annual Report, as required in the Operations Plan and the Consent Judgment.

On June 9, 2023, in response to EGLE's request, MSC did provide the missing records. As such, EGLE is exercising its discretion to waive stipulated fines of \$2,500.00 for violation of Paragraph 7.1 of the Consent Judgment calculated in accordance with Paragraph 14.13, for failure to submit complete information reporting records of USP test results.

**Section III Summary: EGLE is waiving the \$2,500.00 stipulated penalty for the violations of Paragraph 7.1 of the Consent Judgment.**

#### **IV. OPERATIONAL REQUIREMENTS OF CENTRIFUGES**

Paragraph 5.1 of the Consent Judgment requires MSC to operate and maintain the centrifuges pursuant to the operating requirements in the Operations Plan, which is attached as Appendix C of the Consent Judgment. Subsection III.A.1. of the Operations Plan requires that MSC operate all three centrifuges during at least 85 percent of each campaign. Campaign is defined in Section II of the Operations Plan, as follows: "The annual period during which sugar beets are delivered to the Bay City facility, placed in the beet washing and flume process, and sliced is from approximately late-August through early-April (campaign) but the campaign season can vary from year to year depending on the size of the harvest and weather conditions." In accordance with Section III.A.1, operating time of the centrifuges shall be calculated using the total number of hours of the campaign. The campaign referenced in this letter began in August 2022, and is anticipated to continue into April 2023. As a result, operation time of the centrifuges will be determined at the close of the 2022-2023 campaign, following submittal of the next Semi-Annual Report. At that time, sufficient information will be available to determine whether MSC has complied with the requirements of Paragraph 5.1 of the Consent Judgment.

EGLE rejects MSC's force majeure claim dated October 28, 2022, identified as "centrifuge 1, 2 & 3 – Plugging/Frac Tank Malfunction." Paragraph 12.2 of the Consent Judgment defines force majeure as "an occurrence or non-occurrence beyond the control and without the fault of Michigan Sugar...." Among other things, the Consent Judgment excludes "intentional or negligent failure to maintain equipment" from the definition of force majeure. EGLE rejects MSC's conclusion that general maintenance of a frac tank resulting in release of high levels of solids to and plugging of the centrifuges is a force majeure event. As noted

in EGLE's May 12, 2022, correspondence to MSC, Subsection III(A)(1) of the Consent Judgment, Operations Plan, specifies that the only hours that may be subtracted from operating time are those hours that occur during events that meet the definition of a force majeure event pursuant to Section 12.2 of the Consent Order. The calculation for determining the percentage of operating time for the centrifuges is found in the Consent Judgment's Operations Plan, Subsection III(A)(1) and the footnote in that provision. Hours in which the centrifuges were inoperable for reasons that do not qualify as a force majeure event may not be subtracted from operating time.

**In sum, EGLE is hereby demanding \$26,750.00 in stipulated penalties for the violations of the paragraphs identified above during the Semi-Annual reporting period.**

Enclosed is an invoice from EGLE for this demand for payment of stipulated penalties. Pursuant to Paragraph 14.23 of the Consent Judgment, MSC shall pay the total stipulated penalty amount of \$26,750.00 no later than thirty (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, or have any questions regarding this letter, please contact me at 517-281-0376; MeadM1@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,



Malcolm Mead-O'Brien  
Enforcement Specialist  
Enforcement Unit  
Air Quality Division

cc/enc: Nick Klein, Vice President of Operations, MSC  
Angel Pichla, MSC Bay City  
Nadia Hamade, Department of Attorney General  
Chris Hare, EGLE  
Jenine Camilleri, EGLE