



GRETCHEN WHITMER  
GOVERNOR

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



PHILLIP D. ROOS  
DIRECTOR

December 13, 2023

## UPS NEXT DAY DELIVERY

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

SRN: B1493; Bay County

Dear Jason Kain:

This letter serves as a written demand for the payment of stipulated penalties in the amount of \$264,150.00 for Michigan Sugar Company's (MSC) violations of the Consent Judgment it entered with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on December 28, 2018, in Ingham County Circuit Court, Case No. 17-000727-CE (Consent Judgment).

In the Semi-Annual Report dated September 15, 2023, MSC notified EGLE of its compliance with the Consent Judgment for the reporting period of January 1, 2023, through June 30, 2023. 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.

### I. OPERATIONAL REQUIREMENTS

#### Outer Cover Operation and Maintenance

Paragraph 5.3 of the Consent Judgment requires that the cover of the outer pond (described by reference in paragraph 5.2 to Appendix D of the Consent Judgment) be operated and maintained by MSC pursuant to the operating requirements of the Operations Plan.

MSC failed to maintain the outer pond cover pursuant to the operating requirements of the Operations Plan from March 21, 2023, through April 7, 2023. This was witnessed by EGLE's staff observance of black sludge-like material on the outer pond cover and strong sour gas and septic odors near the outer pond, coinciding with odor complaints received throughout this period.

Stipulated penalties apply pursuant to paragraph 14.3 of the Consent Judgment which states, in relevant part: "...stipulated penalties shall accrue per day of violation of each of the requirements identified in paragraphs 5.3..." The stipulated penalties are \$1,200.00 per day for the first through second consecutive day of noncompliance, \$1,600.00 per day for the third through fifth consecutive day of noncompliance, and

\$2,000.00 per day for the sixth consecutive day and beyond of noncompliance. The eighteen (18) days of violations result in stipulated penalties in the amount of \$33,200.00.

### Outer Pond Cover Inspection

Paragraph 5.24(g) of the Consent Judgment requires that MSC maintain the recordkeeping and reporting requirements in the Operations Plan for the outer pond cover on and after February 1, 2019.

As stated above, MSC failed to maintain the outer pond cover during March 21, 2023, through April 7, 2023. EGLE staff observed black sludge-like material on the cover placed in the outer pond and observed strong sour gas and septic-like odors near the outer pond. Nonetheless, in four (4) weekly reports, from March 16, 2023, through April 6, 2023, MSC failed to record the conditions nor explain why it failed to maintain the outer pond cover while biosolids and foul odors were generated.

Paragraph 14.11 of the Consent Judgment states that a stipulated penalty of \$500.00 per violation shall accrue for each violation of paragraph 5.24. The stipulated penalty for the recordkeeping violation is \$500.00.

**Section I Summary: EGLE is hereby demanding \$33,700.00 in stipulated penalties for the violations of paragraph 5.3 and 5.24(g) above.**

## II. AERATION AND FLUME PONDS MANAGEMENT AND HYDROGEN PEROXIDE DOSING

### Aeration Ponds Dissolved Oxygen (DO) Concentration of at least 1.0 milligrams per liter

Paragraph 5.6 of the Consent Judgment requires that MSC maintain a DO concentration in each of the aeration ponds of at least 1.0 milligram per liter (mg/l) as a calendar day average pursuant to the Dissolved Oxygen Sampling Plan.

MSC reported DO concentration of less than 1.0 mg/l in the east and west aeration ponds during the reporting period of fifty-six (56) days. These violations occurred between January 1, 2023, and June 11, 2023. Stipulated penalties apply pursuant to paragraph 14.3 of the Consent Judgment which states, in relevant part: "...stipulated penalties shall accrue per day of violation of each of the requirements identified in paragraphs... 5.6 ..." The stipulated penalties are \$1,200.00 for the first and second consecutive day of noncompliance, \$1,600.00 for the third through fifth consecutive day of noncompliance, and \$2,000.00 for the sixth consecutive day and beyond of noncompliance. The fifty-six (56) days of violations result in stipulated penalties in the amount of \$85,200.00.

### Flume Ponds Hydrogen Peroxide Dosing

Paragraph 5.1 of the Consent Judgment requires MSC to operate and maintain the hydrogen peroxide system for the flume ponds pursuant to the operating requirements in the Operations Plan, which is referenced as Appendix C of the Consent Judgment. Appendix C, Subsection III.B.2, of the Operations Plan requires that MSC operate the hydrogen peroxide system for the flume ponds at a flow consistent with the recommendations of third-party vendor USP Technologies (USP).

Paragraph 5.24(d) of the Consent Judgment requires that MSC comply with the application, monitoring, recordkeeping, and reporting of the hydrogen peroxide system to the flume ponds in accordance with the Operations Plan requirements identified in the Consent Judgment.

MSC's Semi-Annual Report, Appendix D, states that no solids were removed from the flume ponds in June. However, MSC's weekly reports from June 15 through June 29, 2023, record that all hydrogen peroxide was stopped for pond cleanout. Additionally, USP's May 2 and June 1, 2023, reports state that the flume ponds, drained for pond cleaning, were not sampled. The USP June 28, 2023, report states that hydrogen peroxide was not needed for the south and outer primary ponds, but in July USP would continue to monitor the ponds not drained for solids removal.

MSC submitted the USP hydrogen peroxide dosage rate recommendation for the ponds, but the MSC reporting is insufficient to demonstrate accurate recordkeeping and reporting, in order to achieve compliance with the Consent Judgment paragraph 5.24(d).

Paragraph 14.11 of the Consent Judgment establishes stipulated penalties of \$500.00 per violation for each violation of paragraph 5.24. The violation of paragraph 5.24(d) results in stipulated penalties in the amount of \$500.00.

### Euclid Road Basin Cleaning

Paragraph 5.18 of the Consent Judgment requires that MSC implement operating requirements in the Operations Plan to reduce track out from trucks during the entire campaign, and particularly following each peak harvest period. More specifically, pursuant to subparagraph 5.18(b), MSC is required to clean out the catch basins on South Euclid Avenue within seven (7) days after the end of each peak harvest period. Pursuant to subparagraph 5.18(c), MSC is also required to dispose of the material pursuant to applicable law.

MSC provided notice that the 2022 peak harvest period ended on or about November 13, 2022. EGLE understands that MSC cleaned out the catch basins at the conclusion of the campaign, on April 7, 2023, and April 8, 2023. However, EGLE was

not notified that MSC completed catch basin cleanout on South Euclid Avenue within seven (7) days after the end of the 2022 peak harvest period.

Stipulated penalties apply pursuant to paragraph 14.4 of the Consent Judgment which states, in relevant part: "...stipulated penalties shall accrue per day of violation of each of the requirements identified in paragraphs ... 5.18(b). The stipulated penalties are \$750.00 for the first through second consecutive day, \$1,250.00 for the third through fifth consecutive day, and \$1,500.00 for the sixth consecutive day and beyond. The ninety-six (96) days of violations result in stipulated penalties in the amount of \$144,000.00.

**Section II Summary: EGLE is hereby demanding \$229,700.00 in stipulated penalties for the violations of Paragraph 5.6, 5.18 and 5.24(d).**

### III. FINAL EFFLUENT LIMITATION

Paragraph 5.23 of the Consent Judgment requires that MSC comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit, Part I, Section A.1 (Final Effluent Limitations for Monitoring Point 005A). During the reporting period of January 1, 2023, through June 30, 2023, MSC reported one Discharge Monitoring Report temperature (degrees Fahrenheit) exceedance on March 2, 2023.

Stipulated penalties apply pursuant to paragraph 14.9 of the Consent Judgment which states, in relevant part: "...stipulated penalties shall accrue per day of violation of a daily limit in the NPDES Permit, Part I, Section A.1 (Final Effluent Limitations for Monitoring Point 005A) as required by paragraph 5.23." The stipulated penalties are \$750.00 per day of noncompliance for the first through second consecutive day. The one day of violation results in stipulated penalties in the amount of \$750.00.

**Section III Summary: EGLE is hereby demanding \$750.00 in stipulated penalties for the violations of Paragraph 5.23 above.**

In sum, EGLE is hereby demanding a total sum of \$264,150.00 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 \$264,150.00 no later than thirty (30) days after it receives this written demand. Paragraph 14.24, referencing paragraph 8.1 of the Consent Judgment, identifies the manner of payment and the information to be included in the transmittal correspondence.

Michigan Sugar Company

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If you need further information regarding this demand for payment of stipulated penalties, please contact Malcolm Mead-O'Brien at 517-281-0376; [MeadM1@Michigan.gov](mailto:MeadM1@Michigan.gov); or Kailey Schoen; [SchoenK@Michigan.gov](mailto:SchoenK@Michigan.gov); or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

If you have any questions regarding this letter, please contact me at 517-281-0376 or [MeadM1@Michigan.gov](mailto:MeadM1@Michigan.gov).

Sincerely,



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

Enclosure

cc/enc: Nick Klein, Vice President of Operations, MSC  
Angel L. Pichla, Environmental Superintendent, MSC  
Gregory G. Justis, Department of Attorney General  
Chris Hare, EGLE  
Jenine Camilleri, EGLE  
Susan Doty, EGLE  
Kailey Schoen, EGLE  
Charles Bauer, EGLE  
Kathy Brewer, EGLE  
Audrey Schwing, EGLE