



GRETCHEN WHITMER  
GOVERNOR

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



LIESL EICHLER CLARK  
DIRECTOR

November 30, 2021

CERTIFIED MAIL 7021 0350 0000 6194 5818

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

SRN: B1493; Bay County

Dear Messrs. Rupprecht and Scheffler:

SUBJECT: Demand for Payment of Stipulated Penalties of Consent Judgment

This letter serves as a written demand for the payment of stipulated penalties in the amount of \$61,075 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 No. 17-000727-CE (Consent Judgment).

In the Semi-Annual Report dated September 13, 2021, Michigan Sugar Company notified EGLE of its compliance with the Consent Judgment for the reporting period of January 1, 2021, through June 30, 2021. This letter identifies reported violations in the Semi-Annual Report and explains the calculation of stipulated penalties for those violations. The specific violations and stipulated penalties are set forth below.

NPDES Effluent Limit Exceedances

Michigan Sugar Company recorded effluent in violation of its National Pollutant Discharge Elimination System (NPDES) permit on several occasions during the Semi-Annual Reporting Period. Each reported violation was for a single parameter that included daily and/or monthly effluent limits for fecal coliform, Total Suspended Solids (TSS), or Biochemical Oxygen Demand (BOD5). The violations are detailed in Exhibit A, which is enclosed with this letter.

Michigan Sugar Company reported exceeding the seven-day geometric mean effluent limit for fecal coliform on April 14, 2021. In the Semi-Annual Report, Michigan Sugar Company stated that it conducted water sampling several times from several sources, including process water, excess river water, and wastewater, in an effort to identify the source of fecal contamination being discharged from the facility into the Saginaw River. Michigan Sugar Company concluded that Saginaw River water is brought into the factory from the river as noncontact cooling water and, as the water warms, the fecal coliform concentration increases. Michigan Sugar Company reported to EGLE that it performed piping modifications to eliminate stagnant areas that could contribute to fecal

coliform growth and asserted that the combination of cleaning the river water tank and piping modifications reduced the fecal coliform concentration exceedances.

In addition, Michigan Sugar Company reported two days of exceeding the daily effluent limit for BOD5 for Monitoring Point 005A on March 22 and March 30, 2021. Michigan Sugar Company also reported six days of exceedances of the TSS limit on January 3, February 20, April 8, 10, 11, and 12, 2021.

These effluent limit exceedances are violations of Part I, Section A.1 of the 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 effluent limit violations are \$7,250.

EGLE acknowledges Michigan Sugar Company's explanation for the fecal coliform violations and appreciates its effort to identify the cause and reduce the violations. EGLE is exercising enforcement discretion and reducing by 30 percent the stipulated penalty for the fecal coliform violation on April 14, 2021, from \$750 to \$525. EGLE also acknowledges Michigan Sugar Company's explanation that high-strength wastewater caused the TSS violation on January 3, 2021, and that, as stated in Michigan Sugar Company's January 4, 2021, notice of a force majeure claim; the violation was due to a flume backup from frozen sugar beets plugging the flume. Although EGLE does not agree that this event qualifies as force majeure event, EGLE is not including the TSS violation on January 3, 2021, in its demand for stipulated penalties. Therefore, EGLE is hereby demanding stipulated penalties of \$6,275 for the effluent limit violations. The stipulated penalties are identified in Table 1 of Exhibit A.

### **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 milligrams per liter (mg/L) pursuant to the Dissolved Oxygen Sampling Plan (Appendix B of the Consent Judgment). The plan requires that Michigan Sugar Company measure DO at least once every hour in each pond. 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 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. According to Appendix J of the Semi-Annual Report, on February 14, 2021, Michigan Sugar Company did not measure or record DO in the New Aeration Pond (which Michigan Sugar Company refers to as the New Main Aeration Pond) because of a DO probe malfunction. However, extrapolating from the Appendix J data of the preceding and following days, it appears that the DO value likely was above 1.0 mg/L. Please note that pursuant to the modified Dissolved Oxygen Sampling Plan that the Court approved on November 4, 2020, if Michigan Sugar Company temporarily ceases sampling to maintain, repair, or calibrate a DO probe, it "*shall perform sampling three times per calendar day at equal intervals over an eight-hour period using Handheld Dissolved Oxygen Probes.*" EGLE is exercising its enforcement discretion and is not demanding stipulated penalties for Michigan Sugar Company's failure to sample DO in the New Aeration Pond on February 14, 2021.

In Appendix J of the Semi-Annual Report, Michigan Sugar Company reported 37 days on which it did not maintain a DO concentration of at least 1.0 mg/L in one or more of the aeration ponds. EGLE is exercising enforcement discretion for DO violations reported in the Semi-Annual Report on three days (March 14, 17, and 18, 2021) for apparently malfunctioning probes, or valves and piping, in the aeration ponds. Michigan Sugar Company asserted force majeure claims for these events. EGLE is not seeking stipulated penalties for them, without comment on force majeure applicability.

As noted previously, Michigan Sugar Company also asserted a force majeure claim in a letter dated January 4, 2021, in which Michigan Sugar Company stated that frozen beets plugged the flume, resulting in high strength flume water flowing into a catch basin and subsequent lift station pumping to the East and West Aeration ponds for the period of January 2, 3, and 4, 2021. This related to a high strength flume water overflow event cited in EGLE's prior stipulated fine demand for the Semi-Annual Report of July 1 through December 31, 2020, for DO violations. Rather than seek stipulated penalties for the violations, EGLE requested Michigan Sugar Company implement an acceptable Spill/High Strength Slug Load Prevention Plan (Prevention Plan) and corrective action plan. On October 19, 2021, Michigan Sugar Company advised EGLE that it needed additional time to establish a contract to draft the Prevention Plan. As a result, EGLE is awaiting Michigan Sugar Company's commitment to a timeline to draft and implement an acceptable Prevention Plan.

Accordingly, EGLE is seeking stipulated penalties for violations of the required DO concentration in the aeration ponds for 31 of the 37 days of violation. 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. With the enforcement discretion applied, EGLE is hereby

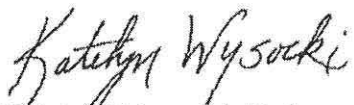
Mr. Eric Rupprecht  
Mr. Kelly Scheffler  
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demanding \$54,800 in stipulated penalties for the violations of Paragraph 5.6. The DO violations and accompanying stipulated penalties are identified in Table 2 of Exhibit A.

An invoice from EGLE for this demand for payment of stipulated penalties is also enclosed with this letter. Pursuant to Paragraph 14.23 of the Consent Judgment, Michigan Sugar Company shall pay the total stipulated penalty amount of \$61,075 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

Enclosures

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

**Exhibit A Table 1**

Description	Evaluation Permit Number	Non-Compliance Date	CJ Stipulated Penalty (Sec. 14.9)	Enforcement Discretion Adjustment
DMR: 01/01/2021-01/31/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 10600, Comment: 'On 12/29/2020, the sugar beet flume malfunctioned and resulted in the TSS exceedance. MSC submitted a Force Majeure notification to EGLE on 1/4/21 explaining the malfunction.'	MI0001091	1/3/2021	\$ 750.00	\$ (750.00)
DMR: 02/01/2021-02/28/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 21400, Comment: 'Reason for TSS exceedance unknown.'	MI0001091	2/20/2021	\$ 750.00	\$ -
DMR: 03/01/2021-03/31/2021, 005A, Net Value (2), Biochemical Oxygen Demand (BOD5), Maximum Daily - Permit Limit: 9000 lbs/day; Value: 11100, Comment: 'High strength wastewater loading to ponds resulted in the BOD exceedance.'	MI0001091	3/22/2021	\$ 750.00	\$ -
DMR: 03/01/2021-03/31/2021, 005A, Net Value (2), Biochemical Oxygen Demand (BOD5), Maximum Daily - Permit Limit: 9000 lbs/day; Value: 10900, Comment: 'High strength wastewater loading to ponds resulted in the BOD exceedance.'	MI0001091	3/30/2021	\$ 750.00	\$ -
DMR: 04/01/2021-04/30/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 13300, Comment: 'High-strength water likely caused elevated TSS reading.'	MI0001091	4/8/2021	\$ 750.00	\$ -
DMR: 04/01/2021-04/30/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 13500, Comment: 'High-strength water likely caused elevated TSS reading.'	MI0001091	4/10/2021	\$ 750.00	\$ -
DMR: 04/01/2021-04/30/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 23700, Comment: 'High-strength water likely caused elevated TSS reading.'	MI0001091	4/11/2021	\$ 750.00	\$ -
DMR: 04/01/2021-04/30/2021, 005A, Net Value (2), Total Suspended Solids, Maximum Daily - Permit Limit: 9000 lbs/day; Value: 15000, Comment: 'High-strength water likely caused elevated TSS reading.'	MI0001091	4/12/2021	\$ 1,250.00	\$ -
DMR: 04/01/2021-04/30/2021, 005A, Final Effluent (1), Fecal Coliform, Max 7-Day Geometric Mean - Permit Limit: 400 #/100mL; Value: 454, Comment: 'Unknown explanation for elevated fecal concentration.'	MI0001091	4/14/2021	\$ 750.00	\$ (225.00)
Stipulated Penalty Liability for Effluent Violations from Jan-June 2021			\$ 7,250.00	\$ (975.00)
<b>Total Stipulated Penalties Demanded for Effluent Violations from Jan-June 2021</b>				<b>\$ 6,275.00</b>

Exhibit A Table 2

MSC BC Semi-Annual Report Jan -Jun 2021 Review

Date	New Main pond DO (mg/l)	Final pond DO (mg/l)	East pond DO (mg/l)	West pond DO (mg/l)	DO	MSC BC comment	Consecutive days	Penalty (\$)	Force Majeure Claim	Force Majeure reduction
1/1/2021	8.5	10	1.2		1.8	Flume malfunction 12/29/2020	NA		Yes 1/4/2021	EGLE Not Agreed FM; requested MSC's Spill/High Strength Slug Load Prevention Plan & Corrective Plan
1/2/2021	8.4	9.7	0.8		2		1	\$ 1,200		\$ (1,200)
1/3/2021	8	9.2	0.7		1.2		2	\$ 1,200		\$ (1,200)
1/4/2021	7.7	8.7	0.7		0.9		3	\$ 1,600		\$ (1,600)
2/14/2021	probe failure	1.4	3.4		3.3	New Main Aeration Pond DO probe malfunction.		\$ 1,200		\$ (1,200)
2/15/2021	"7.8"	0.5	2.1		5	Hand held 7.8 mg/l		\$ 1,200	Not for Final Pond 0.5 DO	
2/16/2021	"8.1"	9.6	1.4		3	Hand held 7.7 mg/l, 8.3 mg/l, 8.2 mg/l		\$ 1,200		\$ (1,200)
2/17/2021	8.8	10.4	1.4		3	New Main Aeration Pond DO probe replaced.	NA			
2/27/2021	6.1	0.8	0.8		2.1	Final Pond: aerator turned off due to high solids in outfall. East Aeration Pond: high biomass from digester going to East Aeration Pond	NA	\$ 1,200		
2/28/2021	5.7	1.9	0.8		2.4		2	\$ 1,200		
3/1/2021	5.9	6.1	0.6		1.9		3	\$ 1,600		
3/2/2021	5.6	7.8	0.7		1.4		4	\$ 1,600		
3/3/2021	5.6	7.6	0.7		1.5		5	\$ 1,600		
3/11/2021	4.3	6.4	1.2		0.9	unknown reason		\$ 1,200		
3/14/2021	6	0.4	3.5		1.8	Final Pond low DO due to fouled DO probe		\$ 1,200	Yes 3/19/2021	\$ (1,200)
3/16/2021	7.2	1.2	4.5		1.1	PM on aeration system. Discovered cracked pipe on West Aeration Pond	NA			
3/17/2021	6.4	4.4	4.1		0.5	Malfunctioning valves discovered on West Aeration Pond		\$ 1,200	Yes 3/19/2021	\$ (1,200)
3/18/2021	5.6	7.4	4.6		0.4	Malfunctioning valves repaired		\$ 1,200	Yes 3/19/2021	\$ (1,200)
3/19/2021	7	7.4	6		2		NA			
3/22/2021	1.1	0.5	2.2		0.4	High-strength wastewater depleted DO	NA	\$ 1,200		
3/23/2021	0.6	0.2	1.9		0.4		2	\$ 1,200		
3/24/2021	0.4	0.1	1.7		0.3		3	\$ 1,600		
3/25/2021	0.3	0.1	1.5		0.3		4	\$ 1,600		
3/26/2021	0.6	0.1	1.5		0.3		5	\$ 1,600		
3/27/2021	0.8	0.2	1.6		0.3		6	\$ 2,000		

Date	New Main pond DO (mg/l)	Final pond DO (mg/l)	East pond DO (mg/l)	West pond (mg/l)	DO	MSC BC comment	Consecutive days	Penalty (\$)	Force Majeure Claim	Force Majeure reduction
3/28/2021	0.7	0.1	1.3		0.3		7	\$ 2,000		
3/29/2021	1.1	0.4	1.3		0.4		8	\$ 2,000		
3/30/2021	0.8	0.2	1.2		0.4		9	\$ 2,000		
3/31/2021	0.6	0.1	1.1		0.3		10	\$ 2,000		
4/1/2021	1.6	0.2	1.9		0.4		11	\$ 2,000		
4/2/2021	5.3	0.5	2.1		0.6		12	\$ 2,000		
4/3/2021	5.8	0.2	1.7		0.8		13	\$ 2,000		
4/4/2021	5.5	0.2	1.3		1		14	\$ 2,000		
4/5/2021	4.7	0.1	2.2		1.2		15	\$ 2,000		
4/6/2021	2.4	0.1	2.9		1.8		16	\$ 2,000		
4/7/2021	1.7	0.1	2.6		2.2		17	\$ 2,000		
4/8/2021	0.9	0.1	3		2		18	\$ 2,000		
4/9/2021	0.7	0.1	2.8		2.2		19	\$ 2,000		
4/10/2021	0.8	0.1	3.1		2.3		20	\$ 2,000		
4/11/2021	1.1	0.1	3.2		2.3		21	\$ 2,000		
4/12/2021	2.6	0.1	3.1		2.4		22	\$ 2,000		
4/13/2021	4	0.1	3.2		3.6		23	\$ 2,000		
4/14/2021	5.8	0.1	3.6		4.5		24	\$ 2,000		
4/15/2021	8.1	2.4	4.5		5.1		NA			

Stipulated Penalty Liability for DO Violations from Jan-June 2021	\$ 64,800.00	
Enforcement Discretion Adjustment		\$ (10,000.00)
<b>Total Stipulated Penalties Demanded for DO Violations from Jan-June 2021</b>		<b>\$ 54,800.00</b>

Non-Consecutive Day of Violation
Consecutive Days of Violation
Discretion/Non-Penalty Violation Day

CJ 14.3 (5.7)	Period of Noncompliance	Penalty Per Day of Violation	Penalty Per Day of Violation
consecutive days	1st through 2nd	\$1,200	\$1,200
	3rd through 5th	\$1,600	\$1,600
	6th and beyond	\$2,000	\$2,000



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>761-10670068</b>
Customer Id:	470829
Invoice Date:	November 23, 2021
<b>Total Due:</b>	<b>\$61,075.00</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# MUL40003 - VIOLATION S OF CONSENT JUDGEMENT - CASE # 17-000727-CE	1.00	\$61,075.000	\$0.00	\$61,075.00

**Total Invoice:** **\$61,075.00**

Payment Due: Upon Receipt

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>761-10670068</b>
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:** **\$61,075.00**