



GRETCHEN WHITMER  
GOVERNOR

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



LIESL EICHLER CLARK  
DIRECTOR

November 29, 2022

VIA EMAIL AND UPS NEXT DAY DELIVERY

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

SRN: B1493; Bay County

Dear Eric Rupprecht and Kelly 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 \$574,850.00 for Michigan Sugar Company's (MSC) violations of the Consent Judgment that 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.

In the Semi-Annual Report dated September 15, 2022, MSC notified EGLE of its compliance with the Consent Judgment for the reporting period of January 1, 2022, through June 30, 2022. This letter identified 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. During the period of this Semi-Annual Report, except where specifically stated below, EGLE rejects MSC's force majeure claims.

One set of MSC's force majeure claims that EGLE has rejected is for the operational failures of MSC's Centrifuges. EGLE informed MSC in a May 12, 2022, correspondence that 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 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.

EGLE accepts the force majeure claims for the Centrifuges during February 9, through February 23, 2022.

## I. FINAL EFFLUENT LIMITATIONS

### Effluent related violations (non-specific to digester upset):

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 (NPDES) Permit, Part 1, Section A.1. During the Semi-Annual Reporting period, MSC exceeded the Final Effluent Limitations for regulated parameters (including biochemical oxygen demand (BOD5), dissolved oxygen (DO) and total suspended solids (TSS)) between January 1, 2022, and February 28, 2022; and between June 1, 2022, and June 30, 2022. EGLE is demanding stipulated fines of \$4,500.00 for violations of Paragraph 5.23 cited in this paragraph, calculated in accordance with Paragraph 14.9 (below).

### Effluent related violations related to Digester Failure and Bypass:

Paragraph 5.23 of the Consent Judgment requires MSC to meet the Final Effluent Limitations for Monitoring Point 005A of the NPDES Permit, Part 1, Section A.1. During the Semi-Annual Reporting period, MSC exceeded the Final Effluent Limitations for regulated parameters (including BOD5, total phosphorus (P), TSS, DO, and potential of hydrogen (pH)) between March 1, 2022, and May 31, 2022. Additionally, six violations of the fecal coliform maximum seven-day geometric mean NPDES permit limit occurred between January 28, 2022, and April 21, 2022. EGLE is demanding stipulated fines of \$232,250.00 for violations of Paragraph 5.23 cited in this paragraph, calculated in accordance with Paragraph 14.9 (below).

### Stipulated Fine provisions for Paragraph 5.23 above:

Paragraph 14.9 of the Consent Judgment establishes stipulated penalties for violations of Paragraph 5.23 of \$750.00 per day of violation for the first through the second consecutive day of noncompliance, \$1,250.00 per day of violation for the third through the fifth consecutive day of noncompliance, and \$1,500.00 per day of violation for the sixth consecutive day of noncompliance and beyond.

Paragraph 14.10 of the Consent Judgment establishes stipulated penalties for monthly violations of Paragraph 5.23 of \$1,000.00 per month for the first monthly violation, \$1,250.00 per month for the second consecutive monthly violation, and \$1,500.00 per month for the third and consecutive monthly violations.

**Section I Summary: EGLE is hereby demanding \$236,750.00 in stipulated penalties for the violations of Paragraph 5.23 above.**

## II. OPERATIONAL REQUIREMENTS OF CENTRIFUGES

The Consent Judgment requires MSC to comply with several additional requirements in order to assure environmental protection and compliance and to minimize nuisance odor conditions. These requirements may or may not be specifically cited in the NPDES Permit.

Paragraph 5.1 requires MSC to operate and maintain the Centrifuges pursuant to the operating requirements in the Operations Plan, 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% of each Campaign. Campaign is defined in Section II of the Operations Plan, and incorporated in the Consents Judgment consistent with Paragraph 4.2, 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 took place on or about August 17, 2021, through April 25, 2022. During the Campaign which concluded during this Semi-Annual period MSC only attained approximately 73% operating time for the Centrifuges, in violation of the Consent Judgment.

Paragraph 14.17 of the Consent Judgment establishes penalties of \$10,000.00 for any and all violations of the requirement in Paragraph 5.1 that MSC shall operate and maintain the Centrifuges pursuant to the operating requirements in the Operations Plan. EGLE is demanding stipulated fines of \$10,000.00 for violations of Paragraph 5.1 cited in this paragraph, calculated in accordance with Paragraph 14.17.

**Section II Summary: EGLE is hereby demanding \$10,000.00 in stipulated penalties for the violations of Paragraph 5.1 above.**

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

Aeration Ponds Dissolved Oxygen Concentration of at least 1.0 milligrams per liter

Paragraph 5.6 requires that MSC maintain a dissolved oxygen 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. EGLE is demanding stipulated fines of \$197,600.00 for violations of Paragraph 5.6 cited in this paragraph, calculated in accordance with Paragraph 14.3 (below), as a result of failure to maintain the required dissolved oxygen concentration the aeration ponds pursuant to the Dissolved Oxygen Sampling Plan.

Paragraph 14.3 of the Consent Judgment establishes penalties of \$1,200.00 for the first and second consecutive day of violation of Paragraph 5.6, \$1,600.00 for the third through fifth consecutive day of violation of Paragraph 5.6, and \$2,000.00 for the sixth consecutive day and beyond.

#### Flume Ponds Hydrogen Peroxide Dosing

Paragraph 5.1 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 attached 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). EGLE is demanding stipulated fines of \$5,500.00 for violations of Paragraph 5.1 cited in this paragraph, calculated in accordance with Paragraph 14.4 (below), for failure to maintain hydrogen peroxide in the dosing tank in accordance with USP recommendations.

Paragraph 14.4 of the Consent Judgment establishes penalties of \$750.00 for the first and second consecutive day of violation of Paragraph 5.1, \$1,250.00 for the third through fifth consecutive day of violation of Paragraph 5.1, and \$1,500.00 for the sixth consecutive day and beyond.

Paragraph 5.24(d) requires application, monitoring, and reporting of hydrogen peroxide to the flume ponds in accordance with the operations requirements identified in the Consent Judgment. EGLE is demanding stipulated fines of \$1,000.00 for violations of Paragraph 5.24(d) cited in this paragraph, calculated in accordance with Paragraph 14.11 (below).

Paragraph 14.11 of the Consent Judgment establishes stipulated penalties of \$500.00 per violation for each violation of Paragraph 5.24.

#### Storm Water Pond Hydrogen Peroxide Dosing

Paragraph 5.5 requires that MSC operate and maintain the hydrogen peroxide system for the storm water pond pursuant to the Operations Plan. EGLE is demanding stipulated fines of \$18,750.00 for violations of Paragraph 5.5 cited in this paragraph, calculated in accordance with Paragraph 14.4 below.

Paragraph 14.4 of the Consent Judgment establishes penalties of \$750.00 for the first and second consecutive days of violation, \$1,250.00 for the third through fifth day of violation, and \$1,500.00 for the sixth and consecutive days of violation of Paragraph 5.5.

Paragraph 5.24(e) requires application, monitoring, and reporting of hydrogen peroxide to the storm water pond in accordance with the operations requirements identified in the Consent Judgment. EGLE is demanding stipulated fines of \$1,000.00 for violations of

Eric Rupprecht and Kelly Scheffler

Page 5

November 29, 2022

Paragraph 5.24(e) cited in this paragraph, calculated in accordance with Paragraph 14.11 (above).

Storm Water in the Channel, Operations Plan

Paragraph 5.11 requires that MSC manages the material, including storm water, in the Channel pursuant to the operating requirements in the Operation Plan. EGLE is demanding stipulated fines of \$104,250.00 for violations of Paragraph 5.11 cited in this paragraph, calculated in accordance with Paragraph 14.4 (below).

Paragraph 14.4 of the Consent Judgment establishes penalties of \$750.00 for the first and second consecutive days of violation, \$1,250.00 for the third through fifth day of violation, and \$1,500.00 for the sixth and consecutive days of violation of Paragraph 5.11.

**Section III Summary: EGLE is hereby demanding \$328,100.00 in stipulated penalties for the violations of Paragraphs 5.5, 5.6, 5.7, 5.11, 5.24(d), and 5.24(e).**

**In sum, EGLE is hereby demanding \$574,850.00 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 \$574,850.00 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 Malcolm Mead-O'Brien at 517-281-0376; [MeadM1@Michigan.gov](mailto:MeadM1@Michigan.gov); or me at, 517-388-3976; [WysockiK@Michigan.gov](mailto:WysockiK@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

Eric Rupprecht and Kelly Scheffler

Page 6

November 29, 2022

cc: Nick Klein, Vice President of Operations, MSC  
Nadia Hamade, Department of Attorney General  
Chris Hare, EGLE  
Jenine Camilleri, EGLE  
Dave Pingel, EGLE  
Katelyn Wysocki, EGLE  
Charles Bauer, EGLE  
Kathy Brewer, EGLE  
Audrey Schwing, EGLE  
Davis Roeser, EGLE