



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

December 8, 2020

CERTIFIED MAIL 7020 0090 0002 2352 3573

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

Dear Messrs. Rupprecht and 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 **\$139,600** 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.

In the Semi-Annual Report dated September 14, 2020, Michigan Sugar notified EGLE of its compliance with the Consent Judgment for the reporting period of January 1, 2020, through June 30, 2020. 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.

Dissolved Oxygen in the Aeration Ponds and Dissolved Oxygen Sampling

Paragraph 5.6 of the Consent Judgment requires Michigan Sugar to maintain in each of the aeration ponds a dissolved oxygen 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 place continuous dissolved oxygen meters in each pond that measures dissolved oxygen at least once every hour. The Plan also requires that Michigan Sugar sample and record the dissolved oxygen concentration of each aeration pond and that Michigan Sugar shall be deemed to be in compliance with Paragraph 5.6 of the Consent Judgment if the dissolved oxygen 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 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 reported 69 days on which it did not maintain a dissolved oxygen concentration of least 1.0 mg/l in one or more of the aeration ponds. Michigan Sugar asserted a force majeure claim in a letter dated January 15, 2020, for a dissolved oxygen violation on January 12, 2020, due to a power outage resulting in a cease of operation of the aeration pond blower system. EGLE

accepts this force majeure claim and is not seeking a stipulated penalty for the January 12, 2020, dissolved oxygen violation. Additionally, Michigan Sugar explained that mud was covering the dissolved oxygen sensors on March 6, 7, and 8, 2020. EGLE accepts Michigan Sugar's explanation and is exercising enforcement discretion for these three days. Therefore, EGLE is seeking stipulated penalties for 65 of the 69 days of violation of the dissolved oxygen concentration in the aeration ponds.

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. After applying the enforcement discretion, EGLE is hereby demanding **\$100,400** in stipulated penalties for the violations of Paragraph 5.6 of the Consent Judgment. Please see the enclosed list of dissolved oxygen violations and associated stipulated penalty calculation.

National Pollutant Discharge Elimination System Permit

Michigan Sugar reported 40 exceedances of the daily effluent limit for fecal coliform for Monitoring Point 005A and two exceedances of the monthly effluent limit for fecal coliform for Monitoring Point 005A (violations chart enclosed).

These effluent limit exceedances are violations of Part I, Section A.1 of the National Pollutant Discharge Elimination System (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 stipulated penalties 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 and \$1,250 for the second consecutive monthly effluent limit violation.

EGLE acknowledges the explanations that Michigan Sugar provided for the fecal coliform violations and appreciates the effort it expended in trying to reduce the violations. Due to this effort, it appears Michigan Sugar has identified the cause of the violations and undertook projects in February 2020 to mitigate the exceedances. Because of this effort, EGLE is exercising its enforcement discretion and is reducing the fecal coliform stipulated penalties by 30 percent, from \$56,000 to **\$39,200**. Please see the enclosed list of fecal coliform violations and associated stipulated penalty calculation.

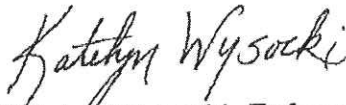
Enclosed is an invoice from EGLE for this demand for payment of stipulated penalties. Pursuant to Paragraph 14.23 of the Consent Judgment, Michigan Sugar shall pay the total stipulated penalty amount of **\$139,600** no later than 30 days after it receives this

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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 me at 517-388-3976; WysockiK@Michigan.gov; or EGLE, P.O. Box 30458, Lansing, Michigan 48909-7958.

Sincerely,

A handwritten signature in black ink that reads "Katelyn Wysocki". The signature is written in a cursive, flowing style.

Katelyn Wysocki, Enforcement Specialist
Enforcement Unit
Water Resources Division

Enclosures

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 Sugar Company's Violations of Dissolved Oxygen Concentrations 1-1-20 through 6-30-20

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

CONSECUTIVE DAYS

OR

Date	New Main pond D.O. (mg/l)	Final pond D.O. (mg/l)	East pond D.O. (mg/l)	West pond D.O. (mg/l)	Number of Days of Violation	Consecutive days	Penalty
1/3/2020			0.8		1		\$1,200
1/4/2020			0.6		1	2	\$1,200
1/7/2020			0.7		1		\$1,200
1/8/2020			0.9		1	2	\$1,200
1/15/2020			0.7		1		\$1,200
1/16/2020			0.6	0.9	1		\$1,200
1/17/2020			1.4	0.6	1	3	\$1,600
1/25/2020			0.8		1		\$1,200
1/26/2020			0.3		1		\$1,200
1/27/2020			0.5		1	3	\$1,600
2/6/2020	0.8				1		\$1,200
2/9/2020				0.3	1		\$1,200
2/10/2020		0.5	0.6	0.6	1		\$1,200
2/11/2020		0.6			1	3	\$1,600
2/26/2020				0.8	1		\$1,200
2/27/2020				0.9	1	2	\$1,200
3/2/2020				0.3	1		\$1,200
3/9/2020				0.6	1		\$1,200
3/10/2020				0.6	1		\$1,200
3/11/2020				0.8	1		\$1,600
3/12/2020				0.7	1		\$1,600
3/13/2020				0.9	1	5	\$1,600
3/15/2020			0.9		1		\$1,200
3/29/2020				0.8	1		\$1,200
3/30/2020				0.9	1		\$1,200
3/31/2020			0.8	0.9	1		\$1,600
4/1/2020			0.7	0.8	1		\$1,600
4/2/2020			0.9		1		\$1,600
4/3/2020			0.7		1		\$2,000
4/4/2020			0.6		1		\$2,000
4/5/2020			0.6		1		\$2,000
4/6/2020			0.2		1		\$2,000
4/7/2020			0.5		1		\$2,000
4/8/2020			0.8		1	11	\$2,000
5/10/2020				0.9	1		\$1,200
5/11/2020				0.7	1		\$1,200
5/12/2020				0.8	1		\$1,600
5/13/2020				0.3	1		\$1,600
5/14/2020				0.3	1		\$1,600
5/15/2020				0.2	1		\$2,000
5/16/2020				0.2	1		\$2,000
5/17/2020				0.3	1		\$2,000
5/18/2020	0.5			0.3	1		\$2,000
5/19/2020		0.1		0.3	1		\$2,000
5/20/2020		0.1		0.3	1		\$2,000
5/21/2020		0.2		0.3	1		\$2,000

[illegible]

Michigan Sugar Company NPDES Violations 1-1-20 to 6-30-20

Violation Date	Parameter		Limit Value	Sample Value	Units	Stipulated Penalty	Consent Judgment Compliance Paragraph	Stipulated Penalty Paragraph in the Consent Judgment
1/6/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	475	#/100mL	\$ 750	5.23	14.9
1/7/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	580	#/100mL	\$ 750	5.23	14.9
1/8/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	873	#/100mL	\$ 1,250	5.23	14.9
1/9/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	973	#/100mL	\$ 1,250	5.23	14.9
1/10/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1121	#/100mL	\$ 1,250	5.23	14.9
1/11/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1280	#/100mL	\$ 1,500	5.23	14.9
1/12/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1263	#/100mL	\$ 1,500	5.23	14.9
1/13/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	682	#/100mL	\$ 1,500	5.23	14.9
1/14/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	477	#/100mL	\$ 1,500	5.23	14.9
1/23/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	528	#/100mL	\$ 750	5.23	14.9
1/24/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	841	#/100mL	\$ 750	5.23	14.9
1/25/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1477	#/100mL	\$ 1,250	5.23	14.9
1/26/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1939	#/100mL	\$ 1,250	5.23	14.9
1/27/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2701	#/100mL	\$ 1,250	5.23	14.9
1/28/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3406	#/100mL	\$ 1,500	5.23	14.9
1/29/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3719	#/100mL	\$ 1,500	5.23	14.9
1/30/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	4544	#/100mL	\$ 1,500	5.23	14.9
1/31/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2341	#/100mL	\$ 1,500	5.23	14.9

Violation Date	Parameter		Limit Value	Sample Value	Units	Stipulated Penalty	Consent Judgment Compliance Paragraph	Stipulated Penalty Paragraph in the Consent Judgment
1/1/2020	Fecal Coliform	Max Monthly Geometric Mean	200	668	#/100mL	\$ 1,000	5.23	14.10
2/1/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1367	#/100mL	\$ 1,500	5.23	14.9
2/2/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	939	#/100mL	\$ 1,500	5.23	14.9
2/3/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	849	#/100mL	\$ 1,500	5.23	14.9
2/4/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	984	#/100mL	\$ 1,500	5.23	14.9
2/5/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1150	#/100mL	\$ 1,500	5.23	14.9
2/6/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1034	#/100mL	\$ 1,500	5.23	14.9
2/7/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1696	#/100mL	\$ 1,500	5.23	14.9
2/8/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2309	#/100mL	\$ 1,500	5.23	14.9
2/9/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3457	#/100mL	\$ 1,500	5.23	14.9
2/10/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3452	#/100mL	\$ 1,500	5.23	14.9
2/11/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3069	#/100mL	\$ 1,500	5.23	14.9
2/12/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2797	#/100mL	\$ 1,500	5.23	14.9
2/13/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3409	#/100mL	\$ 1,500	5.23	14.9
2/14/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3502	#/100mL	\$ 1,500	5.23	14.9
2/15/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	3272	#/100mL	\$ 1,500	5.23	14.9
2/16/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2540	#/100mL	\$ 1,500	5.23	14.9
2/17/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	2276	#/100mL	\$ 1,500	5.23	14.9
2/18/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	1663	#/100mL	\$ 1,500	5.23	14.9

Violation Date	Parameter		Limit Value	Sample Value	Units	Stipulated Penalty	Consent Judgment Compliance Paragraph	Stipulated Penalty Paragraph in the Consent Judgment
2/19/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	799	#/100mL	\$ 1,500	5.23	14.9
2/1/2020	Fecal Coliform	Max Monthly Geometric Mean	200	433	#/100mL	\$ 1,250	5.23	14.10
3/31/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	456	#/100mL	\$ 750	5.23	14.9
4/1/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	570	#/100mL	\$ 750	5.23	14.9
4/2/2020	Fecal Coliform	Max 7-Day Geometric Mean	400	438	#/100mL	\$ 1,250	5.23	14.9
Total penalty						\$ 56,000		
Total Penalty after 30% reduction applied						\$ 39,200		