



GRETCHEN WHITMER
GOVERNOR

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



PHILLIP D. ROOS
DIRECTOR

April 19, 2024

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:

Following discussions with Michigan Sugar Company (MSC) on February 26, 2024, this letter serves as a revised written demand for the payment of stipulated penalties demand issued to MSC on December 13, 2023, in the amount of \$264,150.00. This penalty demand is for violations of the Consent Judgment MSC 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) and has been adjusted to \$86,950.00 for the reasons detailed below and in the attached spreadsheet.

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.

EGLE acknowledges MSC's assertion that it did not remove the cover on the outer pond and did not observe any physical damage to the cover of the outer pond. Notwithstanding MSC's assertion, EGLE's staff observed 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 from March 21, 2023, through April 7, 2023. EGLE encourages MSC to implement measures to prevent solids building up on the pond cover.

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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.

MSC asserts that paragraph 5.24(g) requires it to comply with the record-keeping and reporting requirements in the Operations Plan for the outer pond cover, including the requirement to maintain records of actions it performed to maintain or repair the cover. EGLE asserts that MSC failed to maintain the outer pond cover during March 21, 2023, through April 7, 2023. During EGLE staff investigations, staff brought to MSC's attention observations of black sludge-like material on the cover placed in the outer pond and strong sour gas and septic-like odors near the outer pond causing an odor nuisance. Nonetheless, in four (4) weekly reports, from March 16, 2023, through April 6, 2023, MSC failed to record the conditions and to explain why it failed to maintain or resolve the impaired usefulness of the outer pond cover while biosolids and foul odors were generated. MSC failed to employ management strategies to assure that the outer pond cover is effective as designed in the Operations Plan to reduce biological activity generating odors from the outer pond.

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 is \$500.00.

Section I Summary: EGLE is hereby demanding \$500.00 in stipulated penalties for the violations of paragraph 5.24 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

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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, and paragraph 5.24(d) establishes recordkeeping and reporting requirements for the Operations Plan. The Operations Plan is referenced as Appendix C of the Consent Judgment. The Operations Plan, Subsection III.B.2, requires that MSC operate the hydrogen peroxide system for the flume ponds at a flow consistent with the recommendations of the third-party vendor USP Technologies (USP).

In MSC's written response it asserted that paragraph 5.24 requires MSC to comply with recordkeeping and reporting requirements of the Operations Plan for the hydrogen peroxide system for the flume ponds, but EGLE did not identify exactly what records and during which time period MSC's alleged noncompliance occurred.

EGLE further clarifies that the Operations Plan, Subsection III.B.2, Flume Pond Hydrogen Daily Dosing Records require the following: the date, USP provided 24-hour average gallon per hour dosing, and a comment. The records field for the Weekly Environmental Log has: "Inspected system for proper operation", "Was there any downtime", and "Downtime Reason". The records submitted failed to note presence of fluid in a particular pond(s), identify which pond(s) is receiving hydrogen peroxide, identify which pond(s) is being dredged, or identify if hydrogen peroxide dosing is adequate to control odors. Additionally, when solids removal occurs from the flume ponds, Operations Plan, III.B.1.b requires MSC to record the date(s), method, amount of solids removed from each flume pond, and the dates on which odor neutralizing equipment was used. MSC has failed to do this in this and prior Semi-Annual Reports. Moreover, the information provided by USP and MSC do not provide consistent information about the status of each pond, solids removal per pond, dewatering and/or dredging and reasoning for analyzing, and hydrogen peroxide application.

Apparently, during this reporting period no solids were removed from January 1, 2023, through June 30, 2023, since the monthly September 2023 report noted no solids removal. The March 2023 report noted daily solids removal from all the flume ponds, but it failed to identify the quantity removed and the method of removal from each specific flume pond. Similarly, the weekly logs fail to clarify which flume pond(s) hydrogen peroxide was applied to and which pond(s) was considered undergoing pond cleanout.

The Operations Plan Appendix C.III.B.2.a.v. states, "Michigan Sugar shall not be required to operate the hydrogen peroxide system for the flume ponds for an individual flume pond when Michigan Sugar is removing solids from that pond." No solids removal was reported between January 1, 2023, and June 30, 2023. MSC logs state the reason

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for hydrogen peroxide downtime is pond cleanout, but do not document which ponds were having solids removed or were scheduled for solids removal. USP recommendations for hydrogen peroxide rates appear to rely on information MSC provides regarding planned flume pond solids removal. USP conducted no testing of the lower pond on April 27, 2023, possibly because it was no longer receiving liquid flow in preparation for pond solids removal. No testing of the narrow pond occurred on June 21, 2023, possibly because it had stopped receiving flow between May 11 and June 21, 2023. No solids removal is documented in any of the ponds before June 30, 2023.

The Operations Plan Appendix C.III.B.1.a states that MSC shall not remove solids from more than three (3) flume ponds between June 1 and August 31 in each calendar year. Therefore, the flume ponds which contained liquid and exposed wet solids in them during this semi-annual reporting period and not actively having solids removed should be managed for odor control with hydrogen peroxide, or other methods prescribed in the Consent Judgment.

MSC submitted the USP hydrogen peroxide dosage rate recommendation for the ponds, but MSC reporting is insufficient to demonstrate accurate recordkeeping and reporting 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. The purpose of the catch basin clean out is to prevent impairment to the waters of the State.

EGLE acknowledges the closure of Euclid Avenue for road work and receipt of the Bierlein Companies memo regarding checking the catch basins at the close of peak harvest and additionally the clean out of the catch basins at conclusion of the campaign. EGLE apologizes for the oversight.

Section II Summary: EGLE is hereby demanding \$85,700.00 in stipulated penalties for the violations of paragraph 5.6 and 5.24(d) above.

III. FINAL EFFLUENT LIMITATION

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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 violation per day of violation on 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 \$86,950.00 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 \$89,950.00 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.

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; or Kailey Schoen; 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.

Sincerely,



Malcolm Mead-O'Brien
Enforcement Specialist
Air Quality Division

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Enclosure

cc/enc: Nick Klein, Vice President of Operations, MSC
Angel L. Pichla, Environmental Superintendent, MSC
Kurt Kissling, Warner Norcross
Gregory G. Justis, Department of Attorney General
Chris Hare, EGLE
Jenine Camilleri, EGLE
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