



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Mark Flegenheimer
President
Michigan Sugar Company
2600 South Euclid Avenue
Bay City, Michigan 48706
markflegenheimer@michigansugar.com

Re: **Notice of Potential Violation and Opportunity to Confer**
Notice of Potential RCRA Violations and Opportunity for Settlement
U.S. EPA ID Number: MID005355607

Dear Mr. Flegenheimer:

Information currently available to the U.S. Environmental Protection Agency suggests that Michigan Sugar Company may be in violation of the Resource Conservation and Recovery Act (RCRA). By this letter, EPA is extending to you an opportunity to advise the Agency, in person or in writing, of any further information EPA should consider with respect to the potential violations.

EPA has identified significant potential reporting violations of RCRA, 42 U.S.C. § 6901 *et seq.*, and the regulations promulgated thereunder at Michigan Sugar Company located in Bay City, Michigan (Michigan Sugar). As a generator of hazardous waste, Michigan Sugar is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth in Michigan Admin. Code R 299.9301 and 299.9501¹. Generator categories are based on the amount of waste generated per month.

Based on EPA's records review, for the periods of 2017 and 2019, Michigan Sugar generated hazardous waste in quantities that exceeded the threshold amount of 1,000 kilograms of hazardous waste per month, which establishes Michigan Sugar as a large quantity generator of hazardous waste, established under Michigan Admin. Code R 299.9301. As a large quantity generator of hazardous waste, EPA has identified that Michigan Sugar potentially violated the following:

- Failure to file biennial reports in violation of Michigan Admin. Code R 299.9308(1)².

¹ Under Section 3006 of RCRA, EPA may authorize state implementing regulations. Following authorization, the state regulations operate in lieu of the federal regulations. Under Section 3008 of RCRA, EPA retains the authority to enforce state authorized regulations.

² Effective August 3, 2020, the State of Michigan promulgated revised regulations, which have not yet been

EPA has identified these potential violations based on select waste reports of one or more treatment, storage and disposal facilities:

- i. In 2017, Michigan Sugar generated, accumulated and offered for transport and treatment 154 tons of hazardous waste including petroleum distillates, acid waste, spent COD test solution, metal contaminated solids, and waste printing ink, in quantities that exceeded the threshold amount of 1,000 kg per month, which qualified Michigan Sugar for the large quantity generator status;
- ii. In 2019, Michigan Sugar generated, accumulated and offered for transport and treatment 186 tons of hazardous waste including spent COD test solution, metal contaminated solids, and fuels, in quantities that exceeded the threshold amount of 1,000 kg per month, which qualified Michigan Sugar for the large quantity generator status; and
- iii. There is no record of Michigan Sugar submitting a biennial report for the periods identified above.

EPA seeks to bring your facility into compliance and resolve the limited violations alleged above within 60 days, provided your facility comes into compliance with the biennial reporting requirement of Michigan Admin. Code R 299.9308(1), and enter into a Consent Agreement and Final Order (CAFO). The CAFO includes the payment of a civil penalty. To take advantage of this proposed settlement, you must:

- (1) Notify EPA **within 15 calendar days** informing EPA of your intent to enter into a CAFO to resolve the matters identified.
- (2) Complete and return to EPA the enclosed CAFO within 30 days of receipt of this letter. In signing the attached CAFO, you are certifying that you have corrected the violations (or will correct them as specified in the CAFO) and will pay the assessed penalty, and you are waiving your opportunity for a hearing or an appeal concerning the violations.
- (3) Correct the violations and provide the submittals required in the enclosed CAFO at paragraphs 31 and 36 within 30 days of the effective date of the CAFO.

During this process, Michigan Sugar will have the opportunity to address the alleged violations. We are giving you the opportunity to present any information that you believe we should consider. Relevant information might include evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial data bearing on your ability to pay such a penalty.

You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice to you, to any member of the public who requests it. If you

assert a business confidentiality claim, please contact Todd Brown, of my staff, for directions on how to submit the documents.

If you are unable to respond timely because of impacts related to the COVID-19 pandemic, please submit a written extension request via email to Todd Brown at brown.todd@epa.gov, explaining the specific impacts on your ability to respond.

It should be noted that if Michigan Sugar decides not to enter into a CAFO to resolve the alleged violations or to notify the EPA of its decision to enter into the proposed CAFO, EPA will consider such decision or the lack of notice as a rejection of the proposed CAFO. EPA will consider further options for ensuring Michigan Sugar's timely compliance with RCRA which could include a broader evaluation of your facility's compliance with RCRA under Section 3007 of RCRA. Under Section 3008 of RCRA and U.S. EPA's RCRA Civil Penalty Policy, EPA may assess a civil penalty of up to \$44,124 for each of the cited violations. However, EPA is offering you an opportunity to settle this matter for \$22,942 provided your facility comes into compliance within 30 days of the effective date of the CAFO.

This letter is being made available to the State of Michigan as a means of notifying the State pursuant to Section 3008(a) of RCRA, as amended, that EPA is preparing to issue a formal enforcement action to Michigan Sugar Company.

Thank you for your prompt attention to this matter. Please direct technical questions to Mr. Brown at (312) 886-601 or brown.todd@epa.gov and legal questions to Eaton Weiler at 312-886-6041 or weiler.eaton@epa.gov.

Sincerely,

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Attachment

cc: Alexandra Clark, Michigan EGLE (clarka37@michigan.gov)
Lonnie Lee, Michigan EGLE (leel@michigan.gov)
Liz Browne, Michigan EGLE (brownee@michigan.gov)