



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

May 4, 2022

Violation Notice No. VN-012757

VIA E-MAIL

David Favero, Michigan Deputy Cleanup Manager
RACER Trust
500 Woodward Avenue, Suite 2650
Detroit, Michigan 48226

Dear David:

SUBJECT: National Pollutant Discharge Elimination System (NPDES)
Designated Name: Racer Trust-Coldwater Road Facility
Per- and Polyfluoroalkyl Substances (PFAS)
Violation/Enforcement Notice

On December 21, 2018, the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), provided a memo to the Materials Management Division (MMD) concerning discharges from the Racer Trust-Coldwater Road Facility located at 6220 Horton Street, Mount Morris, Genesee County, Michigan (Site). The Site was once an automotive manufacturing and plating facility that had an on-site wastewater treatment plant. The Site, owned and operated by RACER Trust (RACER), is now a closed landfill containing contaminated material and sediments from the previous land use. The Site also has three storm water retention ponds and has current and historical storm water discharge points.

The memo clarified that any discharge from the Site to waters of the state, including from the retention ponds, whether routine or emergency in nature, would require an NPDES Permit under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.3101 *et seq.* In lieu of a permit, from 2018 to 2021, RACER implemented site improvements, including increasing the retention ponds' storage capacity and plugging storm sewers across the Site in an attempt to eliminate discharges from the Site to waters of the state.

On December 9, 2021, the WRD received notification from a resident that water was nearing the top of the berms and they were concerned the water would discharge from the ponds causing environmental impacts to the surrounding area.

On December 15, 2021, staff from the MMD visited the Site to verify the conditions described by the resident. MMD staff observed water flowing over the spillway from the middle pond to the western pond. MMD staff also observed water flowing over the berm from the western pond to a forested area. MMD did not observe water discharging from the Site at that time.

Between March 3 and 9, 2022, staff from the WRD and MMD had a call and continued correspondence with RACER and its consultant concerning the ponds. RACER stated the following:

- Discharges from the ponds occur sporadically depending on the amount of precipitation or snow melt events.
- Erosion was occurring at both the spillway for the middle pond and the berm for the western pond.
- A plastic liner was placed over the spillway to prevent further erosion.
- To prevent the continued sporadic discharge of PFAS-contaminated storm water from the ponds and the potential failure of the berm and spillway, RACER intends on pumping, treating, and discharging the pond water to give two feet of freeboard in the ponds.

In a memo to EGLE dated March 9, 2022, RACER provided a Temporary Pond Water Management Plan (Plan). The Plan outlined steps RACER intends to implement to treat the PFAS-contaminated storm water in the ponds then discharge the treated water to the Municipal Separate Storm Sewer System (MS4) that then discharges to Hughes Drain.

On March 14, 2022, staff from the WRD met with RACER and its consultant at the Site to observe the detention ponds. WRD staff observed that the berms containing the western and middle ponds were not properly vegetated, erosion had occurred where water was discharging from the middle and western ponds, and liners had been placed to prevent further erosion. WRD staff also observed water actively discharging from the middle pond to the western pond, from the western pond to a forested area, and from the forested area to an MS4 inlet on North Saginaw Road. This inlet flows through sample locations SS-06 and SS-07, then discharges to Hughes Drain, which ultimately discharges to the Flint River. Based on the observations made by WRD staff, it appears that the efforts to retain the storm water on-site have failed.

After the site visit on March 14, 2022, WRD staff began conducting a file review of sample data related to the Site. The purpose of the file review was to evaluate concentrations of PFAS, specifically Perfluorooctanesulfonic Acid (PFOS) and Perfluorooctanoic Acid (PFOA), in discharges from discharge points at the Site to determine compliance with Part 31 and the Part 4 Rules, Water Quality Standards (WQS), promulgated pursuant to Part 31, R 323.1041 *et seq.*

The review included results of sampling by RACER at the Site submitted between July 17, 2019, and August 10, 2021, as well as results of sampling conducted by the WRD on September 22, 2021. The WRD sampling event was conducted to identify potential sources of the 98.1 ng/L PFOS result found in Cornwell Drain at North Bray Road on June 1, 2021. The WRD collected a sample in an open ditch northwest of the intersection of Harry Street and East Kurtz Avenue, just south of the Site.

Sampling of the middle and western ponds on September 30, 2021, found PFOS in concentrations ranging from 120 ng/L to 170 ng/L. The Water Quality Value (WQV) for PFOS is 12 ng/L. Based on a review of the data provided by RACER, EGLE's sample results, and our

analysis, it appears that discharges from the ponds (SS-06, SS-07, and MH-18), from the upper central portion of the Site (MH-17A), and from historical discharges from the southern portion of the Site (Harry/Kurtz), exceed the WQV, developed in accordance with the WQS to protect waters of the state. A summary of the PFOS results from current discharge points at the Site found during the review is provided in the table below. PFOS results from discharges that have since been plugged are on file.

Sample Location	Sample Date	PFOS Result	Collected By
SS-06	08/28/20-03/11/21	3.6-180 ng/L	RACER
SS-07	08/28/20-03/11/21	8.5-110 ng/L	RACER
MH-17A	03/12/19-03/11/21	22-980 ng/L	RACER
MH-18	11/05/19-03/11/21	210-460 ng/L	RACER
Harry/Kurtz	09/22/21	61.4 ng/L	EGLE

During the WRD site visit on March 14, 2022, and previous meetings and correspondence with RACER, they stated that to prevent further erosion and potential failure of the berms, they intend to pump and treat the wastewater in the ponds, then discharge the treated wastewater to the MS4. Please be aware, regardless of treatment, the discharge of unpermitted contaminated storm water from the ponds to surface waters of the state is a violation of Part 31.

In addition, on April 4, 2022, staff from the WRD and the MMD had a call with RACER and its consultant to discuss EGLE's sample results and current and historical discharges of storm water from the southern area of the Site. Based on EGLE's interpretation of maps provided by RACER and information on the MS4, it appears likely that storm water from the southern area of the Site contributed to the Cornwell Drain results. During the meeting, RACER committed to investigating the potential for contaminated storm water from the Site to have discharged to the open drain south of the Site and contribute to the elevated results.

In an email received April 11, 2022, RACER's consultant provided documents showing that all storm water discharge points in the southern portion of the facility have been plugged. It was also stated that a small drip from discharge point SS-02 would be addressed in the coming weeks.

Discharges of contaminated storm water from the Site to surface waters that may cause or contribute to a violation of a WQV are a violation of Part 31. In addition, unpermitted discharges from a treatment system, whether temporary or permanent in nature, are also violations of Part 31. RACER is not authorized to discharge any storm water from the Site that may cause or contribute to a violation of a WQV. Therefore, the discharge of storm water contaminated with PFOS above the WQV is a violation of Part 31, specifically Section 3109.

The violations in this Violation Notice are continuing.

RACER shall take immediate action to achieve and maintain compliance with the terms and conditions of Part 31.

Please submit a corrective action plan and timeline. The corrective action plan and timeline must include, but is not limited to, the following:

1. Corrective actions to treat, reduce, and/or eliminate remaining contaminated discharges from the southern portion of the Site, if any. If all discharge points have been plugged, please provide a statement to that effect.
2. A timeline for addressing the remaining contaminated discharges, if any, from the southern portion of the Site.
3. A timeline for investigating potential impacts from current and historically contaminated discharges from the southern portion of the Site to the MS4 associated with Cornwell Drain.
4. If applicable, updated corrective actions to treat, reduce, and/or eliminate contaminated discharges from the storm water ponds.
5. An updated timeline for implementation of the corrective actions associated with discharges from the storm water ponds.

RACER shall also submit an NPDES permit application for any treated wastewater discharges from the Site.

Bringing the unauthorized storm water discharges into compliance with the WQV for PFOS shall be accomplished expeditiously. Therefore, the WRD intends to offer a voluntary Administrative Consent Order (ACO), as allowed under Sections 3106 and 3112 of Part 31, MCLs 324.3106 and 324.3112, respectively, that will establish the actions necessary to prevent pollution the WRD considers to be unreasonable and against the public interest. The ACO will establish a path/process to comply with WQS with a mutually agreed-upon compliance plan and schedule. If RACER chooses to not enter into the ACO, the WRD would then pursue enforcement in accordance with Part 31.

By June 3, 2022, please submit the following items:

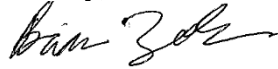
1. Corrective action plan and timeline via the "Corrective Action Plan" form on the Site's dashboard in MiWaters.
2. Notification to the WRD in writing, via the "PFAS ACO Cooperation Decision" form on the Site's dashboard in MiWaters, if RACER intends to enter into an ACO. The WRD will then develop and send a draft ACO to RACER.
3. An NPDES permit application via MiWaters using the "National Pollutant Discharge Elimination System (NPDES) Industrial/Commercial Application Form."

Please be aware, compliance with the requirements outlined in this Violation Notice does not constitute a release or waiver of liability for compliance with Part 31.

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We appreciate your prompt attention to this matter. Should you have any questions regarding this letter or wish to schedule a meeting to discuss it, please contact me at 517-388-0267; zuberb@michigan.gov; or EGLE, WRD, Emerging Pollutants Section, P.O. Box 30473, Lansing, Michigan 48909-7974.

Sincerely,



Brian Zuber, Senior Environmental Quality Analyst
Emerging Pollutants Section, WRD

bz/nm

cc: Stephanie Kammer, EGLE
Cheri Meyer, EGLE
Dale Bridgford, EGLE
Nicole Sanabria, EGLE
Jacob Runge, EGLE