



# Minnesota Pollution Control Agency

## Office of the Commissioner

April 18, 2003

Mr. John Birrenbach  
 Birrenbach Consulting  
 1043 Grand Avenue, #388  
 St. Paul, MN 55105

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To	JOHN BIRRENBACH	From
Co.		Co.
Dept.		Phone #
Fax #	651-222-2628	Fax #

Dear Mr. Birrenbach:

I am writing in response to the April 16, 2003 letter you sent to Attorney General Mike Hatch. Attached to the letter was a detailed list of complaints about Gopher State Ethanol (GSE) and a request that GSE be shut down.

Below is a brief summary of each of your points and our response:

1. **GSE failed to submit a timely permit renewal application.**

The Minnesota Pollution Control Agency (MPCA) received GSE's application for Reissuance of its Title V Permit on April 14, 2003. This is prior to the permit expiration date of April 15, 2003. It has been the MPCA's practice to consider any Application for Reissuance received prior to the expiration date as timely. As you know, GSE, MPCA and U.S. Environmental Protection Agency (US EPA) entered into a Consent Decree to resolve some permit noncompliance issues. The Consent Decree requires the submittal of a permit amendment application to incorporate the terms of the Consent Decree within 180 days after the installation of the last piece of air pollution control equipment at GSE. In order to avoid submittal and processing of a renewal application before all of the equipment is installed, the Consent Decree allows for the submittal of the Title V Permit Renewal Application to be made at the same time as the application for an amendment.

2. **GSE cannot demonstrate that they are in substantial compliance with the expired permit, and GSE has not entered into a schedule designed to bring them back into compliance.**

The Consent Decree signed by MPCA, GSE and U.S. EPA includes a schedule for the installation of control equipment in the decree itself and in the attached Control Technology Plan (CTP). The Consent Decree is an enforceable contract even though the Consent Decree has not been formally entered into federal court. This Consent Decree resolves GSE's permit noncompliance issues.

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With respect to odor issues, as you may know, there is no state odor rule. Odor issues are instead addressed under local nuisance law. The City of St. Paul is presently undertaking a nuisance action against Gopher State Ethanol for alleged nuisance related to odor from the plant.

3. **GSE failed to disclose relevant facts.**

As part of the National Ethanol Initiative, this was examined. Neither the MPCA nor U.S. EPA have any evidence to indicate that GSE was aware of the level of Volatile Organic Compound (VOC) emissions at the time of GSE's initial permitting. The MPCA also has no evidence that GSE made intentional misrepresentations with respect to odor or noise.

4. **GSE endangers human health and the environment.**

GSE is complying with the Consent Decree conditions. They have completed the Consent Decree requirements with respect to the larger source of VOC emissions. The Minnesota Department of Health issued a Public Health Assessment specifically addressing the health effects attributable to the GSE facility. The MPCA has no additional evidence of health effects caused by GSE.

Finally, the MPCA will continue to closely monitor the GSE facility. We expect the company to comply with the terms of the Consent Decree and its permit terms until a new permit is issued and in addition to any applicable air regulations. Should you have further questions, you may wish to contact Becky Helgesen in the MPCA Public Information Office at (651) 282-6244 or Bob Berg of the MPCA who is assigned to monitor GSE's compliance at (651) 296-8698.

Sincerely,



Sheryl A. Corrigan  
Commissioner

SAC/mjb