

**Draft: September 11, 2003**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY      SECOND JUDICIAL DISTRICT

CIVIL DIVISION

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City of Saint Paul,

Plaintiff,

v.

Gopher State Ethanol, LLC, and  
State of Minnesota, Minnesota  
Pollution Control Agency,

Defendants.

**STIPULATION AND ORDER**

**Court File No.: C1-02-9083  
(The Honorable Dale Lindman)**

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1.The date of this Stipulation is September\_\_\_\_, 2003.

2.The parties to this Stipulation are the City of St. Paul (“City”); Dorian J. Ullman, Lisa L. Shaffer, Darren Wolfson, Terrence Markley, Shelley Markley, Mary Madden and Ross Winberg (collectively, “Intervenors”); and Gopher State Ethanol, LLC (“GSE”).

**RECITALS**

1.      WHEREAS, GSE is owner and operator of an ethanol producing plant located at 882 West Seventh Street, Saint Paul, Minnesota; and

2. WHEREAS, odorous air emissions associated with ethanol production at the GSE plant have resulted in complaints from neighbors since the commencement of plant operations in mid-2000; and

3. WHEREAS, both the City and Intervenors have intermittently pursued litigation against GSE since 2001, seeking, among other things, a declaration that GSE operations constitute a public nuisance and remediation of the odorous air emissions (see Ramsey County District Court File Nos. C5-01-5074 and C1-02-9083); and

3. WHEREAS, GSE, while denying allegations that its ethanol production causes a public nuisance, has nevertheless implemented numerous plant modifications designed to remediate odorous air emissions; and

4. WHEREAS, the above-captioned lawsuit between the City and GSE proceeded to a trial in Ramsey County District Court during May, 2003, upon the issue of whether ethanol production at GSE currently constitutes a public nuisance, as defined by Minnesota law (“the Trial”) and

5. WHEREAS, following the Trial, the parties entered into negotiations in an effort to achieve agreement on additional measures for the remediation of remaining odorous air emissions from GSE ethanol production, and agreement on a community standard for odor control; and

6. WHEREAS, the negotiations have included lengthy, court supervised consultations among various experts separately retained by the City and by GSE, which consultations have been directed towards the objectives of identifying the remediation measures and a community odor standard referenced above; and

7. WHEREAS, the Intervenors have participated in the negotiations between the City and GSE; and

8. WHEREAS, the parties to this Stipulation believe that it is in their respective best interests to resolve all pending litigation through entry into this Stipulation; and

9. WHEREAS, this Stipulation is entered into by all parties to achieve the objective of remediating odorous air emissions from GSE ethanol production, while avoiding the risks and expense entailed in continuing litigation; and

10. WHEREAS, this Stipulation does not constitute an admission by any party as to whether or not ethanol production by GSE currently constitutes a public nuisance;

NOW, THEREFORE, based upon the foregoing Recitals, and for good and adequate consideration, the parties hereby stipulate and agree to the following.

11. This Stipulation, with approval from the Court in the above-captioned litigation, shall be entered as an Order of the Court in lieu of any other order, verdict, or judgment based upon the Trial.
  
12. GSE shall implement the Air Remediation and Control Plan set forth below (the "Plan"). As set forth in paragraph 2.5) below, the odor remediation goal for each emission source identified in the Plan is to reduce odorous emissions to the level identified through olfactometry as ED<sub>50</sub> with no dilutions, as measured at the location of each source. The parties understand that this goal is intended to coincide with a reasonable odor condition in the surrounding neighborhood, but that the goal may require future adjustment. The "odor units" target and test variable range to achieve an ED<sub>50</sub> with no dilutions at identified emission sources, as calculated by the City's expert, is set forth in paragraph 2.5) below. By agreeing to this odor remediation goal, GSE is not agreeing to the methods undertaken by the City's experts to arrive at this goal or the bases for these goals and reserves its rights to contest these suggested goals and to seek revised goals. Similarly, the City and Intervenors, while hopeful that the suggested goals will coincide with a reasonable odor condition in the

neighborhood, recognize that unreasonable odor may persist even if the goals are achieved, and therefore reserve the right to seek additional remedial measures or revised goals. This goal and the target odor units therein are based upon modeling parameters as of the last meeting of the parties' experts on or about July 2, 2003. The parties understand that these parameters may change as source points are modified but further understand that upon achievement of the target odor units the target odor unit may not be modified even if source points are modified.

### **AIR REMEDIATION AND CONTROL PLAN**

#### **1) Monitoring of air cleaning devices**

- a. Document operational parameters of air cleaning devices during odor emission testing.
- b. Monitor selected parameters to document that demonstrated efficiency has been maintained. The list of parameters could include the following. (The list needs to be made specific to each source.)
  1. Discharge temperature (water and air)
  2. Water flow rate
  3. Comparison to last test data and scrubber design data
- c. Future documentation of operating parameters can be collected in any reasonable method. However, it is anticipated that monitoring would be at least during the normal rounds (presumably once per shift). The data would be used to determine if the device is being operated in a manner that is consistent with previous acceptable testing.

d. Documents generated by GSE pursuant to the above shall be made available upon request to the expert(s) designated pursuant to paragraph 4) below and who shall acknowledge receipt of same

**2). Improve monitoring and maintenance** concerning spills, piping leaks, other sources of odor to further reduce potential sources of fugitive odors in the building.

a. Good housekeeping through the facility is essential to successful odor control. GSE shall undertake an annual odor and fugitive emissions evaluation.

b. Spills or leaks throughout the facility can directly influence the odor level in the roof exhausters.

c. This is critical in all locations of the building.

d. Historically the problems in the beerwell area indicate the need for increased awareness, identification, and response to fugitive odor emission sources.

e. Document and correct all spills and leaks which influence odor levels. Any and all GSE log books relative to the above shall be made available upon request for review, inspection and copying to experts or persons designated pursuant to paragraph 4) below.

**3). Sampling**

a. Implement GSE test matrix for stack testing, including odor emissions, in accordance with written plan and protocol.

b. Testing shall occur quarterly during the first year and less frequently upon four (4) consecutive quarterly tests demonstrating that the odor is reduced to or below the target odor unit levels identified in 2.5 below and the geometric mean of those four tests but the last test cannot be the highest value of the four test results.

c. Pre-test meetings shall be conducted with City experts for the purpose of reaching an agreement regarding testing parameters and procedures and any other relevant issues under this paragraph.

- d. Triplicate samples for each sampling event shall be gathered.
- e. Pre-dilution of some samples, because of high moisture content, is required to generate valid data.
- f. Testing shall occur under typical operating conditions, not preceded by special maintenance or special clean-up within 48 operating hours.

**4). Develop procedural requirements for implementation of the Plan. The procedures will include, at a minimum, the following components:**

- a. Plans and procedures to implement and maintain the requirements of the Plan;
- b. Identification of internal GSE responsibilities for each item;
- c. Prescription for record keeping and reporting requirements;
- d. Prescription for follow-up actions required and the trigger for each action.
- e. Provide to LIEP any and all US EPA or MPCA filings to the extent not prohibited by these agencies.

**5). Implement the following plant modifications within the timeframe set forth:**

	Emission Source	Remediation Measure	Date	Odor Unit	Target Odor Units
				<u>Test Variable Range</u>	
a	Fermentation Roof Exhaust (EF-1, EF-2, and EF-3)	Improve monitoring and maintenance of spills and leaks, which may contribute to odor emissions	July 15, 2003		
		Relocate and modify exhaust stacks to discharge vertically, a minimum of ten feet	August 31, 2003	EFI: 200-315 EF2: 175-280 EF3: 175-280	250 220 220

		above the roof, with a nominal exit velocity of 3000 fpm			
b	Fermentation Scrubber	Extend stack 10 feet above roof Provide water drain for stack Develop a reasonable estimate of the frequency and volume of fermentation gas discharged through the bypass (after the scrubbers) without reporting to MG CO2 Determine feasibility of short term measures, including method of reducing the water content if the control device requires removal of water If feasible, install the short term measures Identify long-term odor control system Implement a long-term odor control measure	September 15, 2003 September 15, 2003 August 15, 2003  July 31, 2003  To be determined (hereafter "TBD") September 15, 2003 TBD	760 – 1210	960
c	Dryer and Centrifuge Roof Exhausters (EF-4, EF-5, EF-6)	Conduct odor tests after centrifuge modifications  Determine the best approach through odor modeling technique Implement best choice	July 24, 2003  , 2003 September 30  TBD	56-88	70
d	Thermal Oxidizer	Optimize odor performance of TO and			

document  
 - Operation at less than 1530° F. only if required by engineering necessity, environmental grounds or permit restrictions

- If odor goal not reached, increase stack height as needed to meet community odor target and avoid down wash to stack emissions under calm conditions.

		Conduct compliance tests for TO	Per EPA Consent Decree	215-340	270
		- Monitor and record operational parameters impacting odor control consistent with testing program			
		Begin performance evaluation	August 22, 2003		
e	Thermal Oxidizer Roof Exhauster (EF-TO)	Odor tests after centrifuge scrubber and DDGS baghouse are on line	, 2003 September 30		
		Determine whether the air supply should be modified or if EF-TO needs to have a tall stack.	August 15, 2003	28-44	35
		Implement modification	TBD		

f	DDGS Baghouse	Remodel with higher stacks (10 feet and 20 feet above the roof) based upon reasonable modeling results and reasonable structural feasibility	July 15, 2003		
		Extend stack 10 feet roof of adjacent building	July 28, 2003	68-107	85
		Conduct odor and chemical tests_including evaluation of ethanol load out exhaust	July 23, 2003		
		Evaluate the test data and determine necessary actions, if any, for neighborhood odor reductions	TBD following test data arrival		
		If required, install control measures such as TO or equivalent control equipment for treatment of combined baghouse exhaust and ethanol load out exhaust	TBD		
g	Centrifuge scrubber	Remodel scrubber Complete installation of new scrubber	July 15, 2003 July 20, 2003	590-930	740
		Extend stack 20 feet above dryer roof	August 31, 2003		
		Conduct odor and chemical analysis of exhaust stream after new scrubber	September 4-5, 2003		
		Depending on test results, determine if a	October 15, 2003		

		caustic scrubber (or other methods) is required			
		If required, install caustic scrubber (or other) control measures	TBD		
h	Distillation Scrubber	Odor Tests Stack Modifications	July 23, 2003 TBD, depending upon possible requirement for permit modification	11,900-18,900	15,000
i	Green Scrubber	Conduct odor and chemical testing Depending on test results, determine if a caustic scrubber (or other methods) is required If required, install control measures	TBD TBD	410-650	515
j.	Wet Cake	No wet cake operation except under controlled shutdown of thermal oxidizer or grain dryer, except in conformance with odor goal in this Plan. Sample and evaluate odor emissions from wet cake silo vent, if operational If necessary, evaluate control mechanism for silo vent	July 11, 2003  TBD  TBD		

**6). Status reports on implementation of the Air Remediation and Control Plan shall be provided to the Court on 11/3/03, 2/6/04 and 5/1/04.**

3. Until achieving the odor remediation goal set forth in the Plan, GSE agrees to plan routine maintenance shut-downs on or during the weekends of Labor Day, Thanksgiving, Easter, Memorial Day and the 4<sup>th</sup> of July.

4. The City and Intervenors shall designate one or more industrial air control and odor expert(s), who shall review and provide any necessary commentary on GSE's implementation of the Plan. To facilitate such participation and collaboration by said expert(s), GSE shall make available to City of Saint Paul's Licensing, Inspections and Environmental Protection (LIEP), counsel for the City and counsel for the Intervenors, and said expert(s) all testing and monitoring data generated pursuant to the Plan including GSE operation logs. The operation logs shall include all operation relating to odor emissions or process equipment and information regarding such operations and equipment such as shutdowns and startups (scheduled or non-scheduled), equipment or plant operation deviations/malfunctions, and discontinuance of an odor emission control technology which occurs for over an hour. GSE shall allow said expert(s) or LIEP to have reasonable access, including surprise visits (subject to safety considerations), for viewing and examination of plant operations for the purpose of ascertaining compliance with the remediation measures and deadlines outlined in the Plan.

5. The parties to this Stipulation understand that certain elements of the Plan include a program for monitoring and testing of emissions which could lead to the need for additional or different remediation measures than those specific measures previously implemented, currently being implemented, or scheduled for implementation in the Plan, any of which measures would occur only after consultation among the parties and/or their experts, as otherwise provided for within this Stipulation. The parties also understand that the timetable set forth in paragraph 2 of this Stipulation includes a period of up to one week for review of plans and contracts by the City and Intervenors (by their designated expert(s)), and that excess time required for such review could extend the identified deadlines.

6. Subject to the understandings expressed in paragraph 5 and to the occurrence of events outside the control of GSE, failure by GSE to timely implement any measure prescribed by this Stipulation or to otherwise comply with any provision herein shall, upon motion by the City or Intervenors and adverse determination by the Court, subject GSE to such order, penalty, or other remedy as the Court shall deem appropriate. In the Court's discretion, the remedy may include daily fines, payable to the City, along with expert costs incurred, and upon any such motion the court may in its discretion award attorney's fees to any party. In the event that the Court determines that a penalty is appropriate, GSE shall disclose to the counsel for Intervenors and the

City and the Court its financial records for 2003 and all those in existence for 2004, including but not limited to balance sheets, financial statements, income statements, quarterly reports, audited records, **monthly profit and loss statements, credit reports, depreciation schedules, asset reports,** and tax records. These records shall be under court ordered seal not to be disclosed to persons other than counsel or financial experts within the City or financial experts retained by counsel, unless otherwise ordered by the Court.

7. The Court shall retain jurisdiction over the above-captioned matter through at least July, 2004, for such proceedings to enforce or modify this Stipulation as may be required by justice. This provision shall not, however, impair the rights of any party hereto in the event of litigation concerning matters arising after the date of this Stipulation.

8. Pursuant to Minnesota Statutes Section 13.03, Subd. 6, the Court orders that the City shall provide to GSE and the Intervenors any and all complaint information it receives regarding GSE including information identifying the complainant, subject to the following protective order that GSE shall not contact these complainants nor disclose the identity of these complaints. The complaint information is for informational purposes only in order for GSE to assess and

address the impact of its operations upon the community. GSE and the City shall periodically assess the complaints reviewing such matters as operational logs and environmental conditions such as wind direction and velocity to determine odor mitigation success criteria or target(s) and operational parameters. GSE and the City will make available to the Intervenors their analysis and conclusions. Complaint information may be relied upon by the experts in the formation of expert opinion, reports, and analysis, but the names and identifies of the complaints cannot be disclosed by the experts. The parties may not use the complaint information provided obtained pursuant to this paragraph as evidence for impeachment or in any court hearing, trial or testimony; however, the parties may obtain the same complaint data via other means as permitted under Minnesota law and Rules of Civil Procedure and use the complaint information for impeachment purposes or otherwise as permitted under Minnesota law and Rules of Evidence.

9. The parties shall appear before the Court during the second week of May, 2004 with additional days reserved for hearing before the end of that month, for a hearing on the then-current condition of GSE operations, specifically including progress on achieving the goal of ED<sub>50</sub> with no dilutions for each point of emission, as measured at each source and by dispersion modeling, identified in the Plan. Following that hearing, the Court shall enter such further order, which may confirm,

modify, and or extend the terms of this Stipulation, as justice and the law of Minnesota may require or allow. Counsel for the parties to this Stipulation shall meet with the Court in January, 2004 to assess the status and progress of odor mitigation measures. All "To Be Determined" (TBD) items shall be determined by the parties as of the date of the January Court conference. Any remaining TBD items shall be listed by the parties and the Court shall set a briefing schedule and hearing date for the Court to decide the remaining TBD items. Any disputes regarding compliance with the Stipulation shall be listed to the Court in writing on or before the January, 2004 conference during which the Court shall establish a briefing schedule and a hearing date. The parties may bring an enforcement or contempt motion at any time notwithstanding the above.

10. Pursuant to the request of Intervenors for additional noise remediation and monitoring, GSE agrees to do the following:

- i. Install a new noise deflecting wall to protect the surrounding neighborhood from noise generated by the cooling cyclones; and
- ii. Maintain records of any noise monitoring activity, including spot noise measurements and remedial measures to decrease noise generation, documenting participants, equipment operators,

equipment, time, place, methods and results of the activity. The City and Intervenors may have access to such records upon request.

iii. Refrain from any independent noise monitoring or alterations of noise generating operations during times of City noise monitoring in order to avoid influencing the results of City noise enforcement activity.

12. GSE agrees to provide counsel for the City and Intervenors with advance reports of any planned plant shutdown, or reports of unplanned shutdown as soon as possible after its first occurrence, along with the best available information on the reason for and expected duration of the shutdown. Such reports will be provided by e-mail.

13. The parties agree that the target odor unit values previously listed for each emission source identified above are the objectives for any odor remediation efforts undertaken pursuant to this Stipulation. If such odor unit values are achieved at or below the identified levels (pursuant to the testing described herein), the parties are in agreement that such a result indicates that the target odor unit levels were attained at the time of the test. Because of the statistical variability associated with the testing hereunder, there is a range of results that may be reflected by the testing that is consistent with achieving the target level of odor units. The variability of test results

means, however, that odor unit values that are both above the target level and within the identified variability range will require further evaluation. Any such test value may, but does not necessarily, represent a reduction of odor units to the target level.

Whether such a higher value test result actually reflects attainment of the target value will require confirmation through further testing. Additionally, it is agreed that significant change in operating conditions following attainment of the target odor levels would require additional testing to assure continued attainment of the target odor levels under the new conditions.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2003.

**CITY OF ST. PAUL**

By \_\_\_\_\_  
Manuel J. Cervantes  
Its: City Attorney

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ATTORNEYS FOR GOPHER STATE ETHANOL

**ORDER**

The terms and conditions set forth in the Stipulation to Enter Consent Order above are hereby adopted as the Consent Order of the Court as if set forth fully herein. The Court retains jurisdiction in the above-entitled action until otherwise ordered by the Court.

The Court Administrator is directed to enter a judgment without prejudice immediately, there being no just cause for delay.

LET JUDGMENT BE ENTERED IMMEDIATELY with no stay of entry.

Dated: September \_\_\_\_, 2003

BY THE COURT:

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The Honorable Dale Lindman  
Judge of the District Court