

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

JOHN DARISH, JOAN DARISH, GAIL
NICKLOWITZ, MICHAEL NICKLOWITZ,
GRACE KIM, and EUGENE KIM,

Plaintiffs,

vs.

WSG PROPERTIES, LLC, AMC-WSG,
LLC, and AMC-MID MICHIGAN
MATERIALS LLC,

Defendants.

Case No: 25-002153-CE

Hon. Julia B. Owdzej

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**PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

NOW COMES Plaintiffs, JOHN DARISH, JOAN DARISH, GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ, GRACE KIM, and EUGENE KIM (hereinafter "Plaintiffs"), by and
through their attorneys, FLOOD LAW PLLC, and respectfully requests that this Honorable
Court deny Defendants' Motion for Summary Disposition for the following reasons:

1. Plaintiffs filed this action in December 2025 challenging Defendants' sand and
gravel mine that has been in operation near their respective residents without permits required by

law for years. Since 2023, Defendants have been enlarging and mining the bottomlands of an inland lake, activities prohibited by Michigan's Inland Lakes and Stream Act, MCL 324.30102, without a permit from the state's Department of Environment, Great Lakes, and Energy ("EGLE").

2. Defendants do not deny their activities or their need for an Inland Lakes and Streams Act permit to lawfully operate. Defendants applied for such a permit December 21, 2023, and have continued to seek a permit for over two years. However, despite their efforts, Defendants have not obtained a permit, meaning that they continue to be in operation without a permit, unlawfully.

3. Defendants' use of a "draft permit" to support their Motion for Summary Disposition is unsupported by any statutory, regulatory, or court authority. There is no provision for a "draft permit" as the basis for compliance with the Inland Lakes and Streams Act in the statute itself or implementing rules. And with neither statutory authority nor any notice, the so-called "draft permit" is not a final agency action and has no legal effect as a matter of law.

4. Defendants stated to the court that the "draft permit" would be finalized within 60 days. The "draft permit" was never noticed with an effective date. But regardless of notice, it has been more than 60 days since Defendants presented it to this court in support of their Motion for Summary Disposition and Defendants still do not have a final permit authorizing their inland lake activities.

5. The undisputed facts of Defendants ongoing expansion and mining the bottomlands of an inland lake, activities prohibited by Michigan's Inland Lakes and Stream Act, establish a prima facie case for violation of the Michigan Environmental Protection Act (MEPA).

6. Plaintiffs do not seek to challenge the other, factually related litigation involving Defendants. Rather, Plaintiffs seek to challenge Defendants' continued operation without legally

required permits, and the nuisance and interference with riparian rights it is causing to surrounding residents.

7. Defendants' expansion of an inland lake is not the result of the Court's order in Defendants' other litigation nor is it mandated by the Court's order. It is the direct result of ongoing actions taken by Defendant without a permit. Defendants continue to enlarge the lake and mine the lake bottomlands without a permit. None of this is permitted by the Court's order, let alone required by it.

WHEREFORE, Plaintiffs respectfully request this Honorable Court deny Defendants' Motion for Summary Disposition and grant the relief requested in the Plaintiffs' Complaint.

Respectfully submitted,

By: */s/ Noah D. Hall*

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Dated: March 30, 2026

**BRIEF IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR
SUMMARY DISPOSITION
STATEMENT OF FACTS**

This case involves Defendants' sand and gravel mine that has been operating in blatant violation of Michigan's Inland Lakes and Stream Act since 2023. Since 2023, Defendants have enlarged a lake to approximately 15 acres and have mined the lake bottomlands, activities expressly prohibited without a permit by the Inland Lakes and Stream Act, MCL 324.30102.

(Plfs' Comp. ¶ 68, 84). Defendants continue to mine and enlarge the lake and have indicated to this Court that they intend to expand the lake to 59 acres. Defendants do not have, and have never had, a permit from the state's Department of Environment, Great Lakes, and Energy ("EGLE") for these otherwise prohibited and unlawful activities. (Plfs' Comp. ¶ 62-64).

Defendants' own hydrological experts have determined and stated that the lake Defendants are expanding and mining is directly connected to groundwater. (Plf's Comp. ¶75-80). The enlarging lake sits on top of the area's groundwater that supplies Plaintiffs' residential drinking wells and many other residents in Ann Arbor Charter Township. The groundwater is connected to Massey Lake and other waters and natural resources. Defendants' illegal and unpermitted mining of the lake bottomlands creates additional harm and significant risk to the residential groundwater users and groundwater dependent natural resources. (Plfs' Comp., ¶ 90-93). Further, Defendants discharge mine waste to the same groundwater, compounding the pollution, impairment, and harm to water, natural resources, and private property rights.

The Plaintiffs, three immediately neighboring resident households, filed suit against Defendants in December 2025. Plaintiffs seek "protection of the air, water or other natural resources and the public trust in these resources from pollution, impairment or destruction" pursuant to the Michigan Environmental Protection Act (MEPA), MCL 324.1701(1). Plaintiffs also allege public and private nuisance and harm to their riparian rights by a nonriparian.

Again, there is no factual dispute that Defendants do not have, and have never had, a permit from EGLE for their otherwise prohibited and unlawful inland lake activities. As of this filing, Defendants have only produced a "draft permit" that has no legal meaning or effect. (Defs' Mot., Ex. 4). The draft permit is not authorized by statute or rule. Nor has EGLE publicly

noticed the document that Defendants claim gives them a right to conduct otherwise unlawful activities.

Further, Defendants claim this “draft permit” was effective on January 16, 2026, and was to be finalized within 60 days. (Def’s Mot., p. 6). Again, this draft permit and timing is not authorized by statute or rule. Regardless, more than 60 days have passed since Defendants filed their Motion based on this draft permit’s effective date, and Defendants do not have a publicly noticed permit from EGLE authorizing inland lake expansion and mining.

LEGAL STANDARD

Defendants bring their Motion for Summary Disposition under MCR 2.116(C)(4), (c)(7), and (C)(8). MCR 2.116 (C)(4) controls motions for lack of subject matter jurisdiction. MCR 2.116(C)(7) provides for dismissal only where a claim is **barred** by a prior proceeding or judgment. “A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.” *Maiden v. Rozwood*, 461 Mich. 109, 119; 597 NW2d 817 (1999). “All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” *Id.* (citing *Wade v. Dep’t of Corrections*, 439 Mich. 158 162, 483 NW2d 26 (1992)).

ARGUMENT

I. Plaintiff’s claims are not moot because Defendants do not have a permit.

Defendants first argue that “[t]he basis of Plaintiffs’ Complaint is moot because Defendants have obtained the permit Plaintiffs alleges is lacking.” (Defs’ Mot., p. 2). However, Defendants’ assertion is not accurate. Defendants only support for their Motion is a “draft permit,” not an actual permit. (Defs’ Mot., Ex. 4).

Defendant’s reliance on a “draft permit” pursuant to the Inland Lakes and Streams Act is unsupported by any statutory, regulatory, or court authority. There is no provision for a “draft

permit” as the basis for compliance with the Inland Lakes and Streams Act in either the statute itself or its implementing rules (Mich. Rule 281.811-281.846). And with neither statutory authority nor any notice, the so-called “draft permit” is not a final agency action and has no legal effect as a matter of law.

Some EGLE regulatory programs have authority and notice procedures for issuing a “draft permit.” Most notably, the Part 21 administrative rules for implementing Michigan’s wastewater discharge statute (MCL 324.3101 et. seq.), expressly provide that a “draft permit”

“means a draft of a permit which is proposed to be issued by the department, which is prepared by staff of the department before public notice of an application for a permit by a discharger, and which contains proposed effluent standards and limitations, proposed compliance schedules, and other proposed conditions or restrictions deemed necessary by the department for a discharge.”

Mich. Rule 323.2102(p).

The state wastewater discharge rules further specify a fast-track “draft permit” procedure for EGLE-designated “clean corporate citizens.” For such “clean corporate citizens” (which Defendant is not), there is specific public notice and comment period for issuing a “draft permit”:

“If the department recommends that the permit be issued, then the department shall provide a copy of the draft permit to the applicant and publish the public notice required under R 323.2117. The department shall issue or deny the permit within 15 calendar days after the conclusion of the public comment period, unless substantial new issues are raised during the comment period or hearing.”

Mich. Rule 323.2194(a)(vi).

EGLE apparently does not purport for the “draft permit” that Defendants rely upon to have any legal effect. EGLE did not notice the draft permit on or around January 16, 2026, as would be required by statute. See MCL 324.30105(1)(b). And of this filing date over 60 days later, it is still not identified or disclosed on the Defendant’s MiEnviro document listing

(available at:

<https://mienviro.michigan.gov/nsite/DEFAULT/map/results/detail/10053137/2789>).

Further, as a legal matter, even if Defendants obtain the required EGLE permit during the course of this litigation, it does not moot any of Plaintiffs' legal claims. Quite simply, there is no such thing as a "permit shield" to a MEPA action or common law claims involving public nuisance, private nuisance, and riparian rights. Even if an inland lakes permit is issued, it "does not modify the rights ... of any riparian owner to the use of his or her riparian water." MCL 324.30106.

II. Plaintiffs do not seek to hold Defendants liable for their compliance with court orders

Defendants present several arguments that Plaintiffs claims should be dismissed because Defendants were simply following court orders in its other litigation against Ann Arbor Township. However, Defendants' expansion of an inland lake is not the result of the Court's order in Defendants' other litigation nor is it mandated by the Court's order. It is the direct result of ongoing actions taken by Defendant without a permit. Defendants continue to enlarge the lake and mine the lake bottomlands without a permit. None of this is permitted by the Court's order, let alone required by it.

In September 2023, Ann Arbor Charter Township filed a lawsuit in this Court against the Defendants. See Washtenaw County Circuit Court Case No. 23-001234-CE, Ann Arbor Charter Township Verified Complaint. Ann Arbor Charter Township's complaint alleged that Defendants' pumping of groundwater was harming residential wells, including the residences of Plaintiffs John and Joan Darish and Gail and Michael Nicklowitz. Ann Arbor Charter Township's complaint alleged that Defendants' mining operations were in violation of the Ann Arbor Charter Township's Conditional Use Permit.

On September 29, 2023, Ann Arbor Charter Township moved this Court for a preliminary injunction. See Case No. 23-001234-CE, Ann Arbor Charter Township’s Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction. On October 10, 2023, this Court issued a preliminary injunction order against Defendants halting their mining operation. See Case No. 23-001234-CE, Order Granting Preliminary Injunction. On October 20, 2023, this Court issued a stipulated clarification to its preliminary injunction order that: “Defendants are prohibited from discharging process waste water or groundwater from the NPDES discharge pipe, as indicated on Exhibit A hereto, or otherwise causing a net loss of groundwater from the site.” See Case No. 23-001234-CE, Stipulated Clarification to Order Granting Preliminary Injunction.

Further, Defendants’ dredging activities were only allowed by this Court’s orders for a brief period in 2024. On July 3, 2024, this Court issued a Stipulated Order allowing a limited “Dredging Trial Period.” See Case No. 23-001234-CE, Stipulated Order Regarding Temporary Dredging Operations. On September 30, 2024, this Court issued a Stipulated Order extending the limited “Dredging Trial Period” to October 15, 2024. See Case No. 23-001234-CE, Stipulated Order Extending Dates of Temporary Dredging Operations. This Court has not issued any orders allowing any other extension or permission of a limited “Dredging Trial Period” beyond October 15, 2024.

This Court’s orders are clear – Defendants may not use their previous discharge pipe or cause a net loss of groundwater from the site. Defendants were only allowed by this Court’s orders to dredge lake bottomlands from July 3 to October 15, 2024, and not beyond. The Court’s

orders in no way require the Defendant to continue to mine and enlarge the lake. And the Court's orders in no way allow dredging bottomlands beyond October 15, 2024.

Furthermore, this Court's orders did not grant Defendants the EGLE permits they require to actually go forward with mining. Plaintiff's claims challenge Defendants' permit-less mining operation that created an illegal lake and continues with mining of the lake's bottomlands, not the court's prior order lifting its prohibition on mining. Just because the court lifted **one** legal barrier to Defendants' mining operation does not mean that Defendants' operation is now entirely permitted by Michigan law, which still requires them to acquire permits from EGLE.

The damage that Plaintiffs have suffered are not the result of the court's order in Defendants' other litigation. First, the creation of an unpermitted lake is the ongoing result of Defendants' mining operation, not the court's order stopping the loss of groundwater. Defendants' unpermitted actions created a situation where, as soon as the mining was stopped, which would eventually happen one way or another, a 59-acre lake would form. They cannot now blame the formation of that lake on a court order halting their illegal mining operations. Second, Plaintiffs are suffering from pollution caused by Defendants' bottomland mining operation, which continues without a permit and was not ordered by the court. While the court did alter its injunction to allow Defendants to mine the lake's bottomlands, it did not **order** Defendants to mine the bottomlands. The mining, and the creation of the lake, are both voluntary actions that Defendants have taken that are not the result of court order. Plaintiffs' claims do not challenge the court's order, they challenge Defendants' continued permit-less operations despite prior court intervention.

Plaintiffs do not seek to apply conflicting standards on Defendants. Defendants argue that Plaintiffs "seek to impose liability for conduct undertaken in compliance with valid court

orders[.]” (Defs’ Mot., p. 11). However, the only relief Plaintiffs request is the halting of mining operations, which would not conflict with Defendants’ other preliminary injunction, which also bars mining operations aside from the bottomland-mining of the lake. Again, the court did not **order** Defendants to continue mining operation, nor did it grant them the necessary permits. If the Defendants were to halt mining operations, or if they were ordered to, they would still comply with all court orders they were under prior to this case.

III. Plaintiffs have sufficiently plead claims upon which relief could be granted under any of their legal theories

a. Plaintiffs sufficiently plead allegations that Defendants are operating without a permit and polluting the environment to support a MEPA claim

Plaintiffs Complaint contains several allegations detailing the polluting nature of Defendants’ actions, such as the fact that Defendants are dredging the bottomlands of a lake connected directly to the groundwater, causing pollution to seep into the aquifer. (Plf’s Comp., ¶79, 81). Plaintiffs further allege that Defendants continue to operate without legally required permits. (Plf’s Comp., ¶93). These factual allegations sufficiently establish a claim for violation of MEPA upon which relief could be granted.

MEPA provides that a party may maintain an action against any person “for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.” MCL 324.1701(1). To maintain the action, the plaintiff must first make out a prima facie case that the defendant has or is likely to pollute, impair, or destroy the air, water, or other natural resources. MCL 324.1703(1); *Ray v. Mason Co. Drain Comm’r*, 393 Mich. 294, 309, 224 N.W.2d 883 (1975).

“MEPA does not impose specific requirements or standards; instead, it provides for de novo review in Michigan courts, allowing those courts to determine any adverse environmental

effect and to take appropriate measures.” *Nemeth v. Abonmarche Dev., Inc.*, 457 Mich. 16, 30, 576 N.W.2d 641 (1998).

Under MEPA, the circuit court may also examine the validity, applicability, and reasonableness of a pollution control standard “fixed by rule or otherwise, by the state or an instrumentality, agency, or political subdivision of the state....” MCL 324.1701(2). “Where the purpose of the statute used as a pollution control standard is to protect our natural resources or to prevent pollution and environmental degradation, a violation of such a statute can establish a prima facie case under the MEPA.” *Nemeth, supra* at 36, 576 N.W.2d 641. Therefore, in determining that a plaintiff has made out a prima facie MEPA violation, the trial court may either (1) make detailed and specific findings that the defendant's conduct has polluted, impaired, or destroyed, or is likely to pollute, impair, or destroy, the air, water, or other natural resources, *Ray, supra* at 309–310, 224 N.W.2d 883, or (2) find that the defendant has violated an applicable pollution control standard, *Preserve the Dunes, Inc. v. Dep't of Environmental Quality*, 471 Mich. 508, 516, 684 N.W.2d 847 (2004).

The Michigan Court of Appeals has expressly considered the Inland Lakes and Streams Act for “establishing the impairment standard” that can “serve as [an] aid to the trial court when establishing a common-law impairment standard for the resources at issue.” *Michigan Citizens for Water Conservation v. Nestle Waters N. Am. Inc.*, 269 Mich. App. 25, 97, 709 N.W.2d 174, 217 (2005), *aff'd in part, rev'd in part*, 479 Mich. 280, 737 N.W.2d 447 (2007). Two years of ongoing blatant violations of the Inland Lakes and Streams Act prohibitions on lake expansion and bottomlands mining fit squarely within “impairment” for the affected waters of the state to establish a prima facie MEPA case.

Once a prima facie case is made out by the plaintiff, the burden of proceeding shifts to the defendant, who may rebut the prima facie case with evidence to the contrary. MCL 324.1703(1); *Ray*, supra at 310–311, 224 N.W.2d 883.

Finally, the defendant may elect to present the affirmative defense that there “is no feasible and prudent alternative to defendant's conduct and that his or her conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction.” MCL 324.1703(1); *Ray*, supra at 312–313, 224 N.W.2d 883.

b. Plaintiffs’ have sufficiently stated a claim for Violation of Riparian Rights by a nonriparian upon which relief can be granted

Riparian rights are “special rights to make use of water in a waterway adjoining the owner’s property,” including the right to reasonable use of the water, to construct and maintain a dock, and to use the water surface for recreational purposes. *Holton v Ward*, 303 Mich App 718, 725–26; 847 NW2d 1 (2014).

Plaintiffs’ Complaint alleges that “Defendants’ mining operations are unreasonably interfering with and violating Plaintiffs’ riparian rights.” (Plfs’ Comp. ¶120). Plaintiff alleges several facts in support of its claim, including Massey Lake’s proximity to the mine and the pollution currently seeping into the local aquifer (which also feeds Massey Lake) through Defendants’ illegal lake. (Plfs’ Comp., ¶79, 81, 93). The Complaint also details activities that Plaintiffs enjoy on the lake, such as canoeing, fishing, and hiking, which Defendants’ polluting has interfered with. (Plfs’ Comp., ¶118-119). These factual allegations create a claim upon which relief could be granted.

c. Plaintiffs' Private Nuisance claims contain sufficient facts upon which relief could be granted

For a private nuisance claim, Plaintiffs must allege: (1) an invasion of property interests; (2) resulting in significant harm; (3) caused by Defendants' conduct; and (4) that the invasion was either intentional and unreasonable or otherwise actionable as negligence. *Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 428–32; 770 NW2d 105 (2009).

Defendants argue that Plaintiffs' allegations of private nuisance are limited to “noise, vibration, dust, and truck traffic,” but Defendants ignore other factual allegations about the effects of the mine while downplaying the harm that their neighbors face. First, dust, noise, vibration, and truck traffic, could conceivably reach a level where daily life becomes materially disrupted. Dust alone, when it reaches certain levels, can cause a number of health problems on top of the day-to-day pain it causes through difficult breathing and eye irritation. Accepting the allegations in a light most favorable to Plaintiff, these allegations alone could give rise to a claim upon which relief could be granted. Second, other allegations in Plaintiffs' Complaint also support their claim for Private Nuisance. For example, Defendants bottomland mining has caused pollution to seep into the groundwater and pollute the aquifer. (Plfs' Comp., ¶¶79, 81, 93). Plaintiffs' Complaint, taken as a whole, contain sufficient facts about the harmful effects of Defendants' mine on Plaintiffs' daily lives to establish a claim of Private Nuisance upon which relief could be granted.

d. Plaintiffs' Public Nuisance claim contains sufficient facts upon which relief could be granted.

A public nuisance is an “unreasonable interference with a common right enjoyed by the general public.” *Capitol Properties Group*, 283 Mich App at 427 (quoting *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995)).

Defendants argue that Plaintiffs failed to allege a significant, long-lasting interference with public health, safety, or convenience and a distinct injury to Plaintiffs, but Plaintiffs' Complaint contains several distinct injuries to Plaintiff and long-lasting interferences with public health. The Complaint states that Defendants' bottomland mining is causing pollution to seep straight into the local aquifer, which can and has caused pollution to the groundwater that Plaintiffs rely on for residential uses like drinking water. These facts sufficiently support a claim for Public Nuisance upon which relief could be granted.

e. Plaintiffs' Complaint contains sufficient facts to support its claim for declaratory relief

For the same reasons as argued above, Plaintiffs are entitled to declaratory relief halting all mining operations and ordering Defendants to fully reclaim, remediate, and restore the site from all harm they have caused to protect Michigan's natural resources and Plaintiffs' rights and interests.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request this Honorable Court DENY Defendants' Motion for Summary Disposition and enter any other relief in Plaintiffs' favor which is proper in law and equity.

Dated: March 30, 2026

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on March 30, 2026.

By: Overnight Courier Facsimile E-mail
 Hand Delivered U.S. Mail E-file
 Certified Mail

Signature: /s/ Ryan Myers
Ryan Myers