

**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. Tracy Van Den Bergh

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**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S RENEWED MOTION FOR SUMMARY DISPOSITION**

NOW COME 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 request that this Honorable Court deny Defendants' Renewed Motion for Summary Disposition for the following reasons:

1. Defendants' Renewed Motion is brought exclusively under MCR 2.116(C)(8), which tests only the legal sufficiency of the Amended Complaint and requires the Court to accept all well-pleaded factual allegations as true and construe them in Plaintiffs' favor.

2. The Amended Complaint alleges specific conduct, including groundwater use and process-water discharge, creation and enlargement of a groundwater-fed lake, dredging and mining of lake bottomlands, and continued mining activity over an aquifer serving neighboring residential wells.

3. The Amended Complaint further alleges a hydrological connection between Defendants' mining site, including the enlarging lake (sometimes called Pond 3) and several other surface waters and connecting channels, groundwater in the aquifer, Massey Lake, and neighboring groundwater users; a turbidity plume; pollution and impairment involving turbidity, iron, and manganese; and 2026 testing of Plaintiffs' residential wells identifying those conditions.

4. Defendants' arguments that Plaintiffs have not proven contaminant migration, have not excluded naturally occurring sources, and cannot establish that the mine caused the well conditions are factual-sufficiency arguments that cannot support dismissal under MCR 2.116(C)(8).

5. Neither EGLE's Part 301 permit nor the LimnoTech report conclusively defeats Plaintiffs' claims. The governing statute preserves riparian rights and does not authorize unlawful pollution, while the LimnoTech report identifies probable excess sediment deposition, likely bathymetric change, hydrogeological effects, potential biological impacts, and a need for additional groundwater investigation.

6. Plaintiffs have sufficiently pleaded claims under MEPA, for violation of riparian rights, and for private and public nuisance. The Amended Complaint alleges concrete environmental and property harms rather than merely challenging EGLE's permitting decision.

7. Even if the Court concludes that any count requires additional factual specificity or that Plaintiffs' request for declaratory or injunctive relief should be treated as a remedy rather than a separate substantive claim, dismissal with prejudice would be improper under MCR 2.116(I)(5) and MCR 2.118.

WHEREFORE, Plaintiffs respectfully request this Honorable Court deny Defendants' Renewed Motion for Summary Disposition and grant such other relief as is proper in law and equity.

Respectfully submitted,

By: /s/ Noah D. Hall

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Dated: October 6, 2026

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

**I. INTRODUCTION**

Defendants' Renewed Motion should be denied because it asks the Court to decide factual sufficiency on a motion brought exclusively under MCR 2.116(C)(8).

A motion under MCR 2.116(C)(8) tests whether the allegations in the complaint state a legally cognizable claim. It does not test whether Plaintiffs already possess sufficient evidence to prove those allegations. Yet Defendants repeatedly ask the Court to determine whether Plaintiffs have proven that Defendants' mining activities caused the conditions found in Plaintiffs' wells, whether the detected constituents instead arose naturally, whether the mine's wastewater system actually threatens groundwater, whether the LimnoTech report affirmatively disproves environmental injury, and whether EGLE's issuance of a permit establishes that Defendants' conduct will cause no environmental harm.

Those are questions of proof and competing factual inferences. They are not proper grounds for dismissal under MCR 2.116(C)(8).

The Amended Complaint alleges considerably more than Defendants acknowledge. Plaintiffs allege that Defendants use groundwater in their mining and aggregate washing operations; discharge process wastewater into onsite impoundments connected to groundwater; created and enlarged a groundwater-fed lake; dredge and mine the lake bottomlands; and conduct those activities over an aquifer serving nearby residential drinking wells. The Complaint further alleges that these activities are causing a turbidity plume and are polluting and impairing groundwater with turbidity, iron, and manganese. (Am. Compl. ¶¶ 79–96, 128–143).

Plaintiffs also allege actual testing of their residential wells showing elevated turbidity, iron, and manganese; interference with groundwater use and Massey Lake; and excessive dust, noise, vibration, and truck traffic affecting neighboring properties. (Am. Compl. ¶¶ 115–148).

The Complaint additionally incorporates historical facts that are particularly significant under a pleading standard, including EGLE’s 2023 violation notice, allegations that EGLE personnel observed pollution affecting Massey Lake and other surface waters, prior allegations that groundwater pumping adversely affected neighboring residential wells, and the resulting judicial restrictions on groundwater and wastewater discharge. (Am. Compl. ¶¶ 33–45). These are factual allegations that the court must accept as true for purposes of a motion under MCR 2.116(C)(8).

Defendants are free to contest causation, source attribution, severity, and ultimate environmental effect. But under MCR 2.116(C)(8), Plaintiffs are not required to prove those allegations in their pleading. The Motion should therefore be denied.

## II. LEGAL STANDARD

A motion under MCR 2.116(C)(8) “tests the legal sufficiency of the complaint.” *El-Khalil v. Oakwood Healthcare, Inc.*, 504 Mich. 152, 159; 934 N.W.2d 665 (2019). A court considers the pleadings alone, accepts all well-pleaded factual allegations as true, and construes those allegations in the light most favorable to the nonmoving party. *Id.* at 160; *Maiden v. Rozwood*, 461 Mich. 109, 119; 597 N.W.2d 817 (1999).

The Michigan Supreme Court has emphasized the distinction between MCR 2.116(C)(8) and MCR 2.116(C)(10): “the lack of an allegation can be fatal under MCR 2.116(C)(8), [but] the lack of evidence in support of the allegation cannot.” *El-Khalil*, 504 Mich. at 162. The Court

reversed where the lower court effectively required evidentiary support for allegations rather than accepting them as true. *Id.* at 161–162.

Summary disposition under MCR 2.116(C)(8) is appropriate only when the claim is so clearly unenforceable as a matter of law that no factual development could justify recovery. *Wade v. Dep't of Corr.*, 439 Mich. 158, 163; 483 N.W.2d 26 (1992). That standard is dispositive here.

### III. ARGUMENT

#### **A. Defendants' Motion Repeatedly Seeks Factual Determinations That Cannot Be Made Under MCR 2.116(C)(8).**

Defendants' central argument is that Plaintiffs have not established a causal connection between Defendants' operation and the conditions alleged in Plaintiffs' groundwater. But the question under MCR 2.116(C)(8) is not whether Plaintiffs have established causation. The question is whether they have alleged it. They have.

The Amended Complaint alleges that Defendants' groundwater discharge of mine waste and wash water is polluting groundwater with turbidity, iron, and manganese. (Am. Compl. ¶¶ 128–131). It alleges that enlargement of the lake and dredging and mining of its bottomlands pollute and impair Michigan's water resources and Plaintiffs' groundwater interests. (*Id.* ¶¶ 132–137). It then alleges expressly that Defendants' groundwater discharge, lake enlargement, dredging, and wet mining following significant aquifer dewatering are “creating a ‘turbidity plume’” affecting Michigan water resources and harming Plaintiffs' household groundwater with unsafe levels of turbidity, iron, and manganese. (*Id.* ¶¶ 138–139).

Those allegations are not isolated from the preceding factual averments. Plaintiffs allege that Defendants' own hydrological study described Pond 3 (the enlarged lake) as groundwater-fed and stated that water could move from the lake into the Upper Aquifer. (Am. Compl. ¶¶ 79–83). They further allege that EGLE recognized that neighboring residents may obtain drinking water

from the same aquifer involved in the mining operation. (Id. ¶¶ 85–96). Plaintiffs then allege actual testing of their residential wells showing elevated turbidity, iron, and manganese. (Id. ¶¶ 115–126).

Thus, the Complaint alleges specific conduct by Defendants, a hydrological pathway between the mine, the lake, and groundwater, specific constituents and environmental conditions, specific impacts on Plaintiffs’ wells and surrounding natural resources, and a causal relationship between the challenged conduct and those impacts. Defendants dispute the causal relationship. That does not make the allegation disappear.

Indeed, Defendants’ own description of the case demonstrates that they are making a factual-sufficiency argument. They contend that Plaintiffs have not shown contaminants “migrating” from Defendants’ property, have not excluded naturally occurring conditions, and have not demonstrated that mining rather than another source caused the well results. (Defendants Brief at 3). Those are evidentiary arguments of the type governed by MCR 2.116(C)(10), not pleading deficiencies under MCR 2.116(C)(8). Under *El-Khalil*, the Court may not require Plaintiffs to substantiate allegations with evidence at this stage. *El-Khalil*, 504 Mich. at 161–162.

#### **B. Plaintiffs State a Claim Under the Michigan Environmental Protection Act.**

MEPA authorizes an action for declaratory and equitable relief against conduct that has polluted, impaired, or destroyed, or is likely to pollute, impair, or destroy, Michigan’s air, water, other natural resources, or the public trust in those resources. MCL 324.1701(1). The statute further authorizes temporary and permanent equitable relief necessary to protect those resources. MCL 324.1704(1). Plaintiffs allege precisely such conduct and request the appropriate relief.

**1. Plaintiffs challenge Defendants’ environmental conduct, not merely EGLE’s permitting decision.**

Defendants rely heavily on *Preserve the Dunes, Inc. v. Dep’t of Env’t Quality*, 471 Mich. 508; 684 N.W.2d 847 (2004). That reliance is misplaced.

Preserve the Dunes held that MEPA could not be used as a collateral vehicle for attacking defects in an administrative permitting determination where the asserted flaw was not itself environmentally harmful conduct. The Supreme Court explained that the relevant focus of MEPA is the defendant’s conduct and that an administrative permitting decision, “standing alone,” does not itself harm the environment. *Id.* at 514, 519–520.

That is not Plaintiffs’ claim. Plaintiffs are not alleging that EGLE issued the wrong permit. They allege that Defendants themselves are discharging mine wastewater, enlarging a groundwater-connected lake, dredging and mining its bottomlands, creating a turbidity plume, and polluting groundwater and connected surface waters. (Am. Compl. ¶¶ 128–154).

Indeed, the published decision on remand in *Preserve the Dunes, Inc.* addressed whether the permittee’s actual mining conduct violated MEPA. *Preserve the Dunes, Inc. v. Dep’t of Env’t Quality (On Remand)*, 264 Mich. App. 257; 690 N.W.2d 487 (2004). That decision applied MCL 324.1703 to the environmental effects of the mining activity itself. Plaintiffs’ claim here likewise targets Defendants’ conduct and its alleged environmental effects.

**2. The Part 301 Permit Does Not Shield Defendants from MEPA Liability, and Plaintiffs Are Not Collaterally Attacking the Permit in This Action.**

Defendants themselves acknowledge that “the Permit does not preclude otherwise viable civil claims against Defendants.” (Defs.’ Br. at 3 n.1.) That concession frames the issue. The question under MCR 2.116(C)(8) is not whether EGLE issued Permit WRP047682, but whether the Amended Complaint states a viable MEPA claim based on Defendants’ conduct. MEPA

expressly authorizes the circuit court to determine the “validity, applicability, and reasonableness” of a governmental pollution standard and, if necessary, to specify a different standard. MCL 324.1701(2). In *Nemeth v. Abonmarche Development, Inc.*, the Michigan Supreme Court explained that this authority is a “vital part” of the courts’ development of the “common law of environmental quality” and requires the court to determine independently whether legislative or administrative standards are appropriate to the particular MEPA claim. *Nemeth v. Abonmarche Dev., Inc.*, 457 Mich. 16, 30–31, 576 N.W.2d 641 (1998); see also *In re Application of Enbridge Energy to Replace & Relocate Line 5*, No. 168335, slip op. at 30–31 (Mich. July 31, 2026). Thus, an agency issued permit may be relevant to the MEPA analysis, but it does not independently foreclose judicial review of the environmental effects of the permitted conduct.

Part 301 reinforces that distinction. In *Michigan Citizens for Water Conservation v. Nestlé Waters North America Inc.*, the Court of Appeals held that Part 301 did not itself establish a pollution control standard that automatically determined whether a prima facie MEPA violation existed, although its requirements could assist the court in developing the appropriate environmental standard. *Mich. Citizens for Water Conservation v. Nestlé Waters N. Am. Inc.*, 269 Mich. App. 25, 91–97, 709 N.W.2d 174 (2005), *aff’d in part, rev’d in part on other grounds*, 479 Mich. 280, 737 N.W.2d 447 (2007). Defendants invoke *Mich. Citizens for Water Conservation* to argue that Part 301 does not itself establish environmental harm, yet rely on issuance of the same Part 301 permit as establishing the absence of environmental harm. (Defs.’ Br. at 12–13.) The rule does not operate asymmetrically.

The Permit itself confirms that it is not an adjudication eliminating subsequent environmental or private claims. Condition B provides that the permittee “shall not cause unlawful pollution as defined by Part 31 of the NREPA.” Condition H expressly provides that the Permit

“does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his rights.” And Condition 9 specifically cautions that impacts to the aquifers of adjacent properties resulting from the lake development “are subject to civil damage litigations.” (Defs.’ Br., Ex. 4, Permit WRP047682 v.1, at 2, 5.) The Permit further states that dewatering is not authorized and, because the Permit was issued after the fact, that it does not authorize or sanction other work completed in violation of applicable law. (*Id.* at 5–6, Conditions 10, 21.) Those conditions are incompatible with treating issuance of the Permit as a conclusive determination that Defendants’ conduct cannot give rise to environmental or private claims.

Even assuming that Permit WRP047682 or its conditions could constitute a pollution standard under MCL 324.1701(2), its significance cannot be resolved against Plaintiffs under MCR 2.116(C)(8). The Amended Complaint alleges that the associated Resource Monitoring Plan contains no monitoring for groundwater-discharge pollution or groundwater quality, that relevant permit materials were not publicly posted until April 2026, and that EGLE issued a corrected permit on April 6, 2026, although the permit documents bear an earlier “Issued On” date. (Am. Compl. ¶¶ 107–114). At this stage, those allegations must be accepted as true. Whether the Permit supplies an appropriate and sufficiently protective environmental standard is therefore a question for later factual and MEPA analysis, not a basis for pleading-stage dismissal.

Nor are Plaintiffs using this action as a collateral attack on EGLE’s permitting decision. *Preserve the Dunes, Inc. v. Department of Environmental Quality* prevents a plaintiff from using MEPA merely to challenge an administrative permitting defect unrelated to environmentally harmful conduct. *Preserve the Dunes, Inc. v. Dep’t of Env’t Quality*, 471 Mich. 508, 518–20; 684 N.W.2d 847 (2004). Plaintiffs instead allege that Defendants’ groundwater discharge, wet mining,

lake enlargement, and bottomland dredging are themselves polluting or impairing groundwater and connected surface waters. Challenges to EGLE’s permitting decisions are proceeding separately: Plaintiffs and neighboring property owners filed contested-case petitions concerning both the Groundwater Certificate of Coverage and Permit WRP047682. (Am. Compl. ¶¶ 105–106, 127). MEPA expressly contemplates that parallel process because Part 17 “is supplementary to existing administrative and regulatory procedures provided by law.” MCL 324.1706.

Accordingly, Permit WRP047682 may ultimately inform the environmental standard or relief applicable to Plaintiffs’ MEPA claim, but its issuance does not establish as a matter of law that Defendants’ conduct cannot pollute, impair, or destroy protected natural resources. The Permit therefore does not provide a basis for dismissal under MCR 2.116(C)(8).

### **3. Plaintiffs adequately plead causation even under the causation principles invoked by Defendants.**

Defendants rely on *In re Application of Enbridge Energy to Replace & Relocate Line 5*, \_\_\_ Mich. \_\_\_; \_\_\_ N.W.3d \_\_\_ (2026) (Docket No. 168335), for the proposition that MEPA requires factual and proximate causation. Even accepting Defendants’ characterization of that requirement, Plaintiffs plead it.

The Complaint does not merely allege environmental injury somewhere in the vicinity of the mine. It identifies the alleged causal chain: groundwater is pumped out of the aquifer by the mine; the water is used for the mining process and washing, resulting in wastewater; wastewater moves through onsite basins and the groundwater-connected Pond 3; Pond 3 interacts with the Upper Aquifer; the aquifer supplies neighboring groundwater users; mining, dredging, lake enlargement, and wastewater handling create a turbidity plume; and Plaintiffs’ wells contain the same classes of conditions alleged to result from that activity. (Am. Compl. ¶¶ 79–96, 115–143).

Whether expert testimony ultimately proves that causal chain is a different question. Defendants' position improperly collapses the distinction between alleging causation and proving causation. *El-Khalil* forecloses that approach under MCR 2.116(C)(8). *El-Khalil*, 504 Mich. at 162.

**C. The LimnoTech Report Does Not Defeat Plaintiffs' Claims and, in Several Respects, Supports Their Allegations.**

Defendants repeatedly characterize the LimnoTech report as affirmatively disproving environmental impacts from their mine. (Defs.' Br. at 3, 13–14.) That description materially overstates what the report actually says.

LimnoTech described its principal objective as documenting and assessing persistent environmental impacts on Massey Lake resulting from turbid water discharged during recent gravel pit dewatering operations. (Defs.' Br., Ex. 5, LimnoTech Report at 3.) Its investigation found no distinct metal toxicity signal in the sampled lake sediments and found measured sediment metal concentrations at or near background levels, but the report expressly acknowledged that no baseline data existed for comparison with current conditions. *Id.*

More importantly, LimnoTech concluded that, although its metal and grain size data did not prove distinct sediment impacts, the gravel pit discharge likely resulted in a higher than normal volume of sediment being deposited in Massey Lake. *Id.* LimnoTech further concluded that the deposited sediment likely altered the lake's bathymetry, while explaining that the absence of pre discharge baseline data prevented quantification of the change. *Id.*

The report also estimated that approximately 76 tons of sediment were discharged during the period of active gravel pit dewatering and explained that deposition could have been substantially thicker near the lake inlet than an across the lake average would indicate. *Id.* at 25–26. LimnoTech further found that available hydrogeological information was consistent with

decreased groundwater discharge to Massey Lake during active dewatering and identified uncertainty concerning the extent to which groundwater conditions had returned to their undisturbed state. *Id.* at 18–20, 25–26.

Nor did LimnoTech conclude that the biological effects of turbidity, sediment deposition, and altered groundwater flow were immaterial. The report explained that increased turbidity and sediment deposition, together with decreased groundwater input, could impair submerged aquatic vegetation, reduce photosynthesis and dissolved oxygen, affect fish and tadpoles, impair vulnerable life stages of fish and amphibians, and interfere with feeding by fish, birds, turtles, and other organisms. *Id.* at 21. LimnoTech further stated that sustained alteration of turbidity and dissolved oxygen during the period of gravel pit discharges could stress or kill lake vegetation and organisms and adversely affect reproduction and populations of fish, amphibians, and benthic organisms. *Id.* at 21–22.

LimnoTech accordingly recommended additional investigation of groundwater influences on Massey Lake and further hydrogeological characterization between the lake and gravel pit. *Id.* at 22–25. The report specifically observed that within pit pumping may continue to affect groundwater flow to Massey Lake even without discharge outside the pit and recommended monitoring wells between the pit and lake to better quantify past and current impacts. *Id.* at 22–23.

Defendants also overstate LimnoTech’s discussion of potentially natural sources of metals. Defendants assert that the report attributes the presence of metals to “most likely natural causes and only ‘potentially’ the mine.” (Defs.’ Br. at 14.) But that discussion concerns metals measured in sediment samples collected from Massey Lake, not the turbidity, iron, and manganese measured in Plaintiffs’ residential wells. LimnoTech’s investigation sampled and analyzed lake bottom

sediments; it did not test Plaintiffs' residential wells. (Defs.' Br., Ex. 5, LimnoTech Report at 3, 7–9.) Thus, LimnoTech did not determine that the conditions identified in Plaintiffs' well testing arose from natural causes.

Accordingly, the incorporated LimnoTech report does not conclusively negate Plaintiffs' allegations. At most, it creates competing factual inferences concerning the nature, timing, mechanism, source, and magnitude of the alleged environmental impacts. Those competing inferences cannot be resolved against Plaintiffs under MCR 2.116(C)(8).

#### **D. EGLE's Issuance of the Part 301 Permit Does Not Extinguish Plaintiffs' Environmental or Riparian Claims.**

Defendants repeatedly treat EGLE's permit as an affirmative determination that Defendants' activities cannot harm the environment. The governing statute does not give the permit that effect.

MCL 324.30106 directs EGLE to consider impacts to inland waters, connected waters, recreation, fish and wildlife, aesthetics, and riparian rights. It further provides that Part 301 "does not modify the rights and responsibilities of any riparian owner to the use of his or her riparian water," and requires a permit to specify that a project completed pursuant to Part 301 "shall not cause unlawful pollution as defined by part 31." MCL 324.30106.

That language is important for two reasons. First, issuance of a permit does not extinguish neighboring riparian rights. Second, the Legislature itself contemplates a distinction between regulatory authorization of a project and unlawful pollution caused by the project as actually performed. Defendants therefore cannot convert the existence of Permit WRP047682v1 into an adjudication that subsequent operation cannot violate MEPA, interfere with riparian rights, or constitute nuisance.

### **E. Plaintiffs Adequately Plead a Violation of Riparian Rights.**

The Darish and Kim Plaintiffs own property adjoining Massey Lake and therefore possess riparian rights. (Am. Compl. ¶¶ 156–158). They use the lake for canoeing, fishing, hiking, and recreation. (Id. ¶¶ 159–160). They further incorporate the preceding allegations concerning sediment, turbidity, groundwater alteration, and impacts to Massey Lake and allege that Defendants’ operations unreasonably interfere with those rights. (Id. ¶ 161). Those allegations state a cognizable claim.

Published Michigan authority recognizes recreational and aesthetic use of riparian waters as protected reasonable uses. *Mich. Citizens for Water Conservation*, 269 Mich. App. at 74. The same decision is especially relevant because the dispute involved hydrologically connected groundwater and surface-water resources. The Court recognized the significance of the connection between groundwater withdrawal and effects upon streams, lakes, wetlands, and riparian uses. *Id.*

And MCL 324.30106 expressly provides that a Part 301 permit does not modify riparian owners’ rights and responsibilities. Defendants argue, in substance, that Plaintiffs remain physically capable of boating or fishing and therefore have suffered no unreasonable interference. That asks the Court to decide the degree and effect of the alleged environmental changes. Those are factual matters inappropriate for resolution under MCR 2.116(C)(8).

### **F. Plaintiffs Adequately Plead Private Nuisance.**

A private nuisance requires a property interest in the use or enjoyment affected, significant harm, legal causation, and an invasion that is either intentional and unreasonable or otherwise actionable under negligence, recklessness, or ultrahazardous-activity principles. *Adkins v. Thomas Solvent Co.*, 440 Mich. 293, 304; 487 N.W.2d 715 (1992).

Plaintiffs allege that Defendants' mining activities cause excessive dust, noise, and vibrations; that Defendants' truck traffic generates additional dust, noise, and vibration; that truck traffic occurs before permitted operating hours; and that the mining operation interferes with the quiet use and enjoyment of Plaintiffs' residential properties. (Am. Compl. ¶¶ 145–147, 162–164).

Published Michigan authority squarely recognizes those types of mine-related intrusions as nuisance interests. In *Adams v. Cleveland-Cliffs Iron Co.*, 237 Mich. App. 51; 602 N.W.2d 215 (1999), neighboring residents alleged dust, noise, and vibration emanating from an operating mine. The Court held that airborne particulates, noise, and vibration ordinarily sound in nuisance rather than trespass. *Id.* at 54–67. The factual similarity is substantial.

Defendants argue that noise, dust, vibration, and trucks are merely ordinary consequences of a mining operation. But nuisance law does not establish a categorical exemption merely because an interference is associated with a lawful or longstanding business. The relevant inquiry concerns the nature and reasonableness of the interference with neighboring property rights. Determining that question would require evaluating the extent, frequency, duration, location, operating hours, and severity of the alleged invasions. Those are factual questions inappropriate for resolution under MCR 2.116(C)(8).

#### **G. Plaintiffs Adequately Plead Public Nuisance.**

A public nuisance is an unreasonable interference with a right common to the general public. *Capitol Props. Grp., LLC v. 1247 Ctr. St., LLC*, 283 Mich. App. 422, 427; 770 N.W.2d 105 (2009). The interference may be unreasonable where the conduct significantly interferes with public health, safety, peace, comfort, or convenience; is proscribed by law; or produces a continuing and significant effect on public rights. *Id.*

Plaintiffs allege impacts to groundwater, surface water, wetlands, air, road safety, and other natural resources. (Am. Compl. ¶¶ 128–148, 165–166). Those are quintessentially public interests.

Defendants additionally argue that Plaintiffs cannot maintain the claim because they have not alleged injury distinct from the general public. But the Amended Complaint alleges substantially more than generalized environmental concern. Plaintiffs allege impairment of private residential wells serving their homes, effects on property immediately adjoining or neighboring the mine, interference with riparian rights, and localized dust, noise, and vibration. Thus, the pleading alleges both interference with common public rights and particularized injury to Plaintiffs’ own properties and water supplies. Whether Defendants actually caused those injuries is again a factual question, not a pleading question.

#### **H. Count V Does Not Justify Dismissal of the Underlying Claims or the Requested Equitable Relief.**

Defendants are correct only in the narrow sense that injunctive relief ordinarily constitutes a remedy rather than an independent tort. That does not entitle them to dismissal of this action.

Count V expressly incorporates Counts I through IV and alleges an actual controversy, continuing environmental harm, and Defendants’ stated intention to continue the challenged activities. (Am. Compl. ¶¶ 167–177). More importantly, MEPA itself expressly authorizes the relief Plaintiffs request. MCL 324.1701(1) authorizes actions for declaratory and equitable relief, and MCL 324.1704(1) authorizes temporary and permanent equitable relief and conditions necessary to protect natural resources.

Accordingly, even if the Court determines that injunctive relief should not have been pleaded as a separately numbered substantive count, that determination does not eliminate Plaintiffs’ MEPA claim, riparian-rights claim, nuisance claims, right to seek declaratory relief where an actual controversy exists, or statutory right to seek equitable relief under MEPA.

## **I. Defendants Are Not Entitled to Dismissal With Prejudice.**

Defendants ask the Court to dismiss the Amended Complaint in its entirety and with prejudice. Even if the Court finds a pleading deficiency, that request goes too far.

MCR 2.116(I)(5) provides that when summary disposition is granted under MCR 2.116(C)(8), (C)(9), or (C)(10), the Court must give the parties an opportunity to amend as provided by MCR 2.118 unless amendment would be unjustified. Michigan courts recognize that leave to amend is ordinarily appropriate absent particularized reasons such as futility, undue delay, bad faith, or repeated failure to cure deficiencies. *Bennett v. Russell*, 322 Mich. App. 638, 647; 913 N.W.2d 364 (2018).

Defendants cannot establish futility merely by asserting that Plaintiffs previously amended their Complaint. The present pleading concerns continuing conduct and events occurring after the original Complaint, including issuance of the final permit and subsequent groundwater testing. Moreover, most of Defendants' objections concern the factual specificity or causal detail of claims that are legally cognizable under Michigan law. Accordingly, even if the Court concludes that a particular allegation requires greater specificity, dismissal with prejudice would not be appropriate.

## **IV. CONCLUSION**

Defendants' Renewed Motion asks the Court to determine whether Plaintiffs can prove that Defendants' mining operation caused the environmental conditions alleged in the Amended Complaint. That is not the question presented under MCR 2.116(C)(8).

Plaintiffs allege a specific mining and wastewater operation; hydrological connections between the mining site, including the enlarging lake and several other surface waters and connecting channels, groundwater in the aquifer, Massey Lake, and neighboring groundwater users; groundwater and surface-water impairment; a turbidity plume; measured conditions in

Plaintiffs' residential wells; interference with riparian uses; and substantial dust, noise, and vibration affecting neighboring properties.

Michigan law requires those well-pleaded allegations to be accepted as true at this stage. Neither the EGLE permit nor the LimnoTech report conclusively defeats those allegations. The permit expressly preserves riparian rights and does not authorize unlawful pollution, while the LimnoTech report itself identifies probable sediment deposition, likely bathymetric change, hydrogeological effects, potential biological impacts, and a need for additional groundwater investigation.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court DENY Defendants' Renewed Motion for Summary Disposition. Alternatively, if the Court determines that any count requires additional factual specificity or that Count V should be restructured as a request for remedies rather than a separate substantive claim, Plaintiffs request leave to amend pursuant to MCR 2.116(I)(5) and MCR 2.118.

Respectfully submitted,

By: /s/ Noah D. Hall

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Dated: October 6, 2026

### **PROOF OF SERVICE**

The undersigned certifies that on October 6, 2026, a copy of the foregoing document was served upon the attorney(s) of record herein via:

- |                                        |                                                       |
|----------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Hand delivery | <input type="checkbox"/> Overnight mail               |
| <input type="checkbox"/> U.S. Mail     | <input type="checkbox"/> Facsimile                    |
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I declare the penalty of perjury that the foregoing statement is true to the best of my information, knowledge and belief.

*/s/ Ryan Myers*

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Ryan E. Myers