



Economic Development Responsibility Alliance of Michigan (EDRA of MI)

Marjorie Steele, founder & chair

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The Committee for Marshall – Not the Megasite

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Michigan Department of Energy, Great Lakes, and Environment (EGLE)

Attn: Director Phil Roos

Phil Agiroff, EGLE Acting Director, Water Resources Division

CC: Regina Strong, EGLE Environmental Justice Advocate Director

Debra Shore, EPA Region 5 Administrator

Steve Hinkley, Calhoun County Road Department

Ron Smith, Calhoun County Water Resources Division

Dr. Doug McLaughlin, Kalamazoo River Watershed Council Executive Director

Attachment: Timeline

Subject: Demand Letter Re: Marshall Megasite Water Violations

Date: September 9th, 2024

Dear Mr. Roos,

On behalf of residents of Marshall, stakeholders of the Kalamazoo River and Lake Michigan watersheds, and members of the Committee for Marshall – Not the Megasite, we're writing to:

- 1) express deep concern over the lack of environmental due diligence being performed by the developer Marshall Area Economic Development Alliance (MAEDA) at the Marshall Area Jobs Opportunity and Recreation (MAJOR) campus, and
- 2) ask that EGLE mitigate further environmental damage through direct and specific action.

Statewide media outlets have taken note of the 13 NPDES permit violations and formal compliance actions MAEDA incurred up through July 2024. By August 6th, MAEDA incurred five more, and EGLE found that none of the previous violations had been remedied. Over the summer to date, there have been a minimum of **four documented instances where sediment-laden stormwater unlawfully exited MAEDA's construction site, traveled over 303 designated wetlands, and entered the Kalamazoo River.**

Dating back to fall of 2023, MAEDA (and its network of at least five contractors) has demonstrated a consistent pattern of:

- failure to provide a timeline for site stabilization (first noted October 2023)
- failure to properly document on-site progress in weekly logs (first noted October 2023)
- providing inadequate SESC plans (first noted November 2023)
- failure to follow, properly implement, and maintain existing SESC plans (first noted June 2024)

Yet since fall of 2023, EGLE has renewed MAEDA's NPDES permits three times—in some cases directly after violations have occurred (see attached timeline for detail).

More urgently: it's clear that further regulatory protections are necessary to mitigate damage to adjacent wetlands and streams. In January 2024, EGLE determined that no Part 301 and 303 permits would be required because MAEDA's stormwater management plan is **to capture and infiltrate all runoff from up to the 100-year storm**, in both temporary and permanent stabilized conditions. However, in the minimum of four instances of polluted stormwater leaving the MAJOR site and entering the Kalamazoo River, the stormwater traveled through wetlands, as noted in four on-site inspections conducted by EGLE's local quality analysis team.

It's clear that the plan MAEDA and its contractors have designed to capture and infiltrate all runoff is not feasible. Given both the apparent inadequacy of the site plan and the pattern of noncompliance demonstrated by MAEDA's team, it's extremely likely that unfiltered stormwater will continue to contaminate these protected bodies of water.

We thank WRD Kalamazoo District Director Jennifer Klang for escalating this issue for enforcement, as noted in the District's September 4th letter to MAEDA, and we expect EGLE's timely enforcement of items 1-3, as noted in the letter. In addition to these items, we ask EGLE's executive leadership to take further direct action to protect these watersheds. Specifically:

- 1) Re-evaluate the determination issued on January 19th, 2024 that neither Part 301 nor 303 permits are required for the project (submission #: HPS-ME3J-PHS7F), considering the impact the project has had already this summer.
- 2) Calculate the cleanup and impact costs of the environmental damage to the wetlands and Kalamazoo watershed caused by MAEDA's project to date, and take necessary action to hold MAEDA financially accountable for cleanup costs and compensating watershed stakeholders.
- 3) Deny all future permit renewals until all violations have been fully resolved, and MAEDA has made full financial compensation for damage.

Thank you for your attention on this important matter.

Sincerely,

Marjorie Steele
Founder, EDRA of MI

co-signed:

Members of the Committee for Marshall – Not the Megasite

Permitting & Compliance Timeline (MAEDA & EGLE)

November 1st 2023: violation

Violation issued by EGLE:

- Application and/or Plan Inadequate

Details: “unsatisfactory” assessments included:

- several areas of changed earth which needed to be stabilized and
- inadequate plans which excluded necessary SESC measures,
- **provided no timeline for permanent site stabilization**, and
- did not indicate what party would be responsible for permanent maintenance—i.e. the property owner, or the drain commissioner.

January 9th 2024: missing December logs

Correspondence between EGLE’s WRD Environmental Quality Analyst Janelle Holm and MAEDA’s project manager Ryan Bennett of Walbridge, discussing MAEDA’s failure to have weekly on-site operator logs taken during the three week December holiday.

No violations issued.

January 12th: Delayed repairs

MAEDA failure to repair silt fencing within the allotted 5-day window after receiving notice.

No violations issued.

January 19th: EGLE permit waivers and recommendations

Official pre-application meeting follow up letter sent from EGLE from Michelle DeLong, Senior Environmental Quality Analyst @ EGLE’s Water Resources Division (project # HPS-ME3J-PHS7F), determining:

- 1) no Part 303 wetlands or Part 301 streams and lakes permitting are required, because MAEDA proposes to contain 100% of their stormwater on-site,
- 2) and noting EGLE recommended additional stormwater control measures be included in plans.

Future unauthorized discharges all flowed over the wetlands in question.

EGLE’s letter did not:

- reiterate the need for timelines for stabilization to be included in the plans, as MAEDA received a violation for not having in November 2023.
- offer any note of censure for MAEDA’s failure to provide three weeks of operator logs over the December 2023 holiday.

January 23rd, 2024: EGLE permit renewal

EGLE renews MAEDA's NPDES mass grading permit no. MIR117483.

February 2nd 2024: county permit renewal

Calhoun County Road Department extended MAEDA's SESC permit

March 13th 2024: EGLE permit renewal

EGLE renews MAEDA's NPDES mass grading permit no. MIR117483.

June 17th 2024: 2 violations - Kalamazoo River & wetland contamination

Violations issued by EGLE:

- Violation of Water Quality Standards:
- Unauthorized Discharge (NPDES)

Details: Reported by members of the Nottawaseppi Huron Band of Potawatomi, who were doing a kayak float to check on wild rice habitats. Tribe members captured initial drone footage of large amounts of sediment entering the Kalamazoo River.

The same day, MAEDA's contractor, Iafate, conducted an on-site Certified Operator Log which made no mention of the stormwater's discharge into the river.

June 18th 2024: 2 violations

Violations issued by EGLE:

- SESC Measures Not Implemented
- Applications and/or Plan Inadequate

Details: Onsite investigation by EGLE Quality Analyst Janelle Holm responding to the complaint on the 17th yielded photos clearly showing cloudy, sediment-laden water traveling overland and into the Kalamazoo River. In her report, Holm noted:

*“Discharge of sediment-laden water from the site of earth change was ongoing at the time of the inspection. **The site was largely unstabilized.** Storm water had flowed from unstabilized drainage ditches into the unstabilized Basin 1. The outlet structure in Basin 1 was unfinished at the time of the storm event and **had not been blocked off** to prevent discharge of sediment-laden water. **Sediment-laden stormwater ...continued through** vegetated upland and **wetland areas with an ultimate discharge to the Kalamazoo River.**”*

June 20th 2024: 3 violations & log inconsistencies

Violations issued:

- SESC Measures Not Implemented
- Inadequate Logs
- Site Condition Inadequate

Details: EGLE Quality Analyst Janelle Holm performed another inspection of the site, and finds further inadequacies:

*“The site of earth change did **not have adequate control measures installed** at the time of the inspection.*

*Erosion control blankets near the outlet south of the railroad tracks had been installed perpendicular to the flow of water, which **was not per installation specifications.***

*Drainage swales and detention basins **were excavated approximately one year and have not been temporary or final stabilized.** Site design has changed during this timeframe.”*

The following week, on June 24th, Holm pressed Walbridge’s Ryan Bennett on why Iafrate’s Certified Operator Logs from June 17th “*did not include information about the discharge of sediment laden water from Basin 1...You stated that the reason why this was not mentioned in the log was because the basin was not yet filled with water at the time of his site inspection on June 17, 2024. Based on my review of drone photos submitted by the complainant, **this does not appear to be the case.***”

June 29th, 2024: contamination of Kalamazoo River & wetlands (self reported)

On July 1st, a representative from MAEDA’s consultant, Stantec, self-reported discharge of sediment-laden water exiting the site and entering the Kalamazoo River on June 19th.

No on-site inspections were performed, and no violation was issued.

July 10th 2024: 4 violations - Kalamazoo River & wetland contamination

Violations:

- SESC Measures Not Maintained
- Unauthorized Discharge
- SESC Measures not Implemented
- Violation of Water Quality Standards

Details: During an on-site inspection, EGLE’s Quality Analyst Janelle Holm observed sediment -laden stormwater entering the Kalamazoo River again.

*“Stormwater in Basin 1 was sediment-laden. One inlet to the pond’s outlet structure had been blocked off with masonry...The other inlet **had been blocked off with filter fabric and plywood**, which did not hold during the storm event...The stormwater then flowed...through the wetlands to the Kalamazoo River.”*

Ms. Holm additionally noted:

*“More planning needs to be put into scheduling and staging of the project. **Basin 1 and the drainage swales should have been completed and stabilized prior to the installation of the culverts under the railroad tracks in May 2024.***”

July 16th 2024: official notice of violation EGLE

EGLE’s director Phil Roos issues a letter of censure to MAEDA, noting the violations and inadequacies of Certified Operator Logs beginning in June—with the exception of MAEDA’s self-reported incident on June 29th.

Mr. Roos’ letter requests:

- a revised SESC plan with detailed timeline,
- photos of stabilization and repair work done since July 10th, and
- a plan to provide accurate and properly documented Certified Operator Logs.

The letter does not mention the lack of operator logs from December 2023, nor site plan inadequacies from violations in November 2023.

August 6th 2024: 5 violations - Kalamazoo River & wetland contamination

Violations:

- Violation of Water Quality Standards
- SESC Measures Not Implemented
- Applications and/or Plan Inadequate
- Unauthorized Discharge
- Site Condition Inadequate

Details: During an on-site inspection, EGLE Quality Analyst Janelle Holm observed “**turbid water was being discharged into the wetland adjacent to the Kalamazoo River. There was evidence that turbid water had entered the Kalamazoo River earlier in the day during a storm event.**

*The SESC plan states that both openings in the outlet control structure will be plugged while Basin 1 is being used as a sedimentation basin. At the time of the inspection, one of the openings was plugged with brick and mortar. **The other opening had a piece of plywood placed behind it.** This slowed the release of turbid water from the basin but did not serve as a plug.*

***Inspection logs did not state** whether the underdrain openings in the outlet control structure had been plugged or if the openings remained open.*

***The revised SESC plan was reviewed. The plan provided a sequence for stabilization, but did not provide timing.** Information on timing was requested via e-mail.*

Check dams were not observed at the site of earth change.”

August 16th 2024: response from MAEDA on timelines

A representative from MAEDA states that they’ve mortared the leaking drain in Basin 1, and provides monthly date ranges for timelines of stabilization.

August 29th 2024: EGLE permit renewal

EGLE renews MAEDA’s NPDES mass grading permit no. MIR117483.

September 4th 2024: second violation notice from EGLE

A letter from EGLE's Kalamazoo WRD Office District Supervisor Jennifer Klang detailed how, of the seven different violations identified in MAEDA's work on July 16th, on August 6th, all seven violations were continuing. By September 3rd, EGLE found three of these seven violations were continuing.

Three compliance actions are identified:

- “1. Selection of alternate and more effective temporary and permanent control measures for the area immediately north of the railroad tracks, which discharges to Culvert 1, where a control measure referred to as “silt fence outlet with excavated storage” was installed at the time of the inspection...*
- 2. A plan for temporary stabilization prior to winter for the areas in Protection Sequences 4A, 4B, and 4C as designated in the SESC plan. These areas are not planned to be final stabilized in 2024.*
- 3. A plan for managing the use of Basin 1 as a sedimentation basin...”*

The letter also notes: *“The WRD reserves its right to take all necessary and appropriate enforcement actions for all violations observed to date and any violations that occur in the future. This may include civil action seeking fines, enforcement costs, injunctive relief, and potential criminal prosecution.*

Due to the severity of the noncompliance, the matter is being evaluated for escalated enforcement.”