



Economic Development Responsibility Alliance of Michigan (EDRA of MI)

Marjorie Steele, founder & chair

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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: Reply to EGLE's Marshall demand letter response

Date: September 27th, 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 want to thank you for your response on September 23rd to our September 9th letter demanding the enforcement of MAEDA's NPDES permits at Marshall's MAJOR campus construction site.

As a statewide grassroots citizen lobbying organization, we're aware that lack of local stakeholder input has been a major point of contention between local residents and economic developers of the MAJOR campus, as well as other taxpayer-funded heavy industrial developments across the state. We want to take a moment to express gratitude to EGLE, and to its director Phil Roos, for taking the time to personally respond to these very serious concerns about the Marshall site. It is our sincerest hope that this communication is the beginning of a more open, productive dialogue between EGLE and the local citizens whose natural resources the Department is entrusted to protect.

In the interest of building said working relationship, and of protecting our state's water quality, we've weighed your responses to our requests carefully. While some of your responses satisfy our requests, we have determined that there are, indeed, additional steps EGLE needs to take to enforce permit rules on Marshall's MAJOR site.

Our responses and request for follow-up action by EGLE are outlined below, with EGLE's quoted responses in italics and requested action items in bold.

- 1) Re-evaluate the determination...that neither Part 301 nor 303...permits are required for the project...considering the impact the project has had already this summer.

“...EGLE staff are in communication with representatives for the project and are evaluating the latest plans independently for regulatory authority, which may then lead to additional permitting requirements or compliance steps.”

These actions taken by EGLE satisfy our request, provided EGLE’s subsequent findings comply fully with the rules of Parts 301 and 303 of NREPA and Part 21 of NPDES. We look forward to reviewing EGLE’s determination.

- 2) Calculate the cleanup and impact costs of the environmental damage to the wetlands and Kalamazoo River watershed caused by MAEDA’s project to date, and take necessary action to hold MAEDA financially accountable for cleanup costs and compensating watershed stakeholders.

“...in this instance, removal of the sediment in the wetland and Kalamazoo River with hand tools or machinery may cause more damage than benefit...”

We understand and agree that physical cleanup may not be ecologically advantageous.

“...sediment is the most significant pollutant in our nation’s waterways. Sediment originates from natural sources, as well as numerous ‘point’ and ‘nonpoint’ sources of pollution and may be carried in flowing water for a substantial distance before settling out where water velocity slows down. Most cities have storm sewer systems that discharge directly to waterways without treatment. As a result, sediment from yards and streets is conveyed to streams and lakes. County drains and streams in agricultural areas are often turbid after rain events due to runoff from crop fields lacking recommended management practices, such as vegetative buffer strips, conservation tillage, and cover crops. With numerous potential sources of natural and unnatural sediment, it would be difficult to determine the specific source of sediment deposition in a particular area and then assign costs to those various sources.”

As Nottawaseppi Huron Band of Potawatomi drone footage clearly showed, so much sediment entered the Kalamazoo River from MAEDA’s construction site on June 17th that half the river was distinctly cloudy for hundreds of yards. This sediment was discharged from a “nonpoint” source—originating from the MAJOR site—because MAEDA’s contractors failed to implement the proper SESC measures to funnel this water through approved point sources.

While we understand that neighboring city stormwater sewer systems and suburban and agricultural nonpoint sources do contribute to sediment pollution in watersheds across the state, it’s clear that MAEDA’s MAJOR construction site has been a major source of nonpoint pollution within a specific, determinable portion of the Kalamazoo River between June and August of 2024.

Other potential, clearly more minor, sources of nonpoint pollution are not subject to the legal ramifications of 18 NPDES permitting violations; MAEDA is. Difficult as it may be, EGLE is responsible for calculating damage due to permit violations and enforcing financial compensation.

“EGLE’s work also includes grant programs and technical assistance designed to reduce discharges of nonpoint source pollution...Your organization is encouraged to work with EGLE to reduce the impact of nonpoint source pollution originating from local communities in the Kalamazoo River watershed. There are a variety of techniques that may be used, such as rain gardens, vegetative swales, and retention basins, which infiltrate storm water instead of discharging directly to local streams...”



It's worth noting, again, that the polluting sediment runoff in question, from MAEDA's MAJOR site, was from a "nonpoint" source, as MAEDA's construction vendors did not have proper retention basins in place to infiltrate storm water.

We ask that EGLE calculate the impact of the damage caused by nonpoint sediment runoff from MAEDA's MAJOR site between June and August of 2024, and that the financial compensation be paid to the Kalamazoo River Watershed Council to for nonpoint pollution mitigation projects. As you know, KRWC is a local scientific nonprofit organization that is specifically designed to implement the types of nonpoint source pollution mitigation projects which you propose.

We also encourage you to work with KRWC to understand the impacts and financial costs of the sediment pollution from MAEDA's MAJOR site, and for recommendations on ways to improve MAEDA's SESC and nonpoint pollution prevention measures.

3) Deny all future permit renewals until all violations have been fully resolved, and MAEDA has made full financial compensation for damage.

"MAEDA holds a Soil Erosion and Sediment Control (SESC) permit through the County Enforcing Agency, which is the Calhoun County Road Department...SESC permits and Permit-by-Rule are enforceable and provide specific requirements that must be followed by the permittee. By law, EGLE may not deny a permit if all requirements for permit coverage have been met. The SESC permit is required to remain in effect until the earth changes have ceased and the site has been stabilized...At that time, the permit may be terminated."

We understand SESC permits are issued by the county. We've included Calhoun County Road Department and Water Resources Division in these correspondences, and will be following up with them regarding SESC permits separately. Our enforcement requests to you, EGLE, pertain to NPDES Michigan Permits-By-Rule; specifically Rule 2190 of Part 21, Wastewater Discharge Permits.

Our request to EGLE for denial of NPDES permit renewal is made on the basis that MAEDA has not met all the requirements for coverage, specifically Rule 323.2190's provisions for permitting found in sections 2(b), 2(c), 2(e), and 2(g) which states that a permittee:

"shall comply with all of the following provisions:

- (b) Be in compliance with a soil erosion and sediment control permit...
- (c) Properly maintain and operate the soil erosion control measures.
- (e) Cause the construction activity to be inspected by a certified storm water operator once per week...
- (g) Dispose of solids, sediment, filter backwash, or other waste that is removed from or results from the treatment or control of storm water...in a manner that prevents any waste from entering waters of the state."

As well as Rule 323.2190 sections 9, and 10(b), which state:

"(9) The construction permittee shall take all reasonable steps to minimize any adverse impact to the surface or groundwaters of the state that result from noncompliance with any of the conditions specified in this rule.

(10) If, for any reason, the construction permittee does not comply with, or will be unable to comply with, any of the conditions that are specified in this rule, the construction permittee shall provide the Department with the following information, in writing, within 5 days of becoming aware of the noncompliance or inability to comply:

- (b) The period of noncompliance, including exact dates and times, or, if the noncompliance is not corrected, the anticipated time that the noncompliance is expected to continue and the steps taken to reduce, eliminate, and prevent recurrence of the noncompliance."



Our request that EGLE deny all future permit renewals until financial compensation has been calculated and paid is based on Rule 2190 section 6 and Rule 2159 section 1(e), which states that EGLE:

“may modify any term of condition, including a schedule of compliance, of a permit, or may revoke a permit upon its finding any of the following:

(e): There is a violation of any term or condition of the permit.”

For specific details on how MAEDA has violated each of these terms and conditions, we refer to the timeline provided in our previous September 9th letter (attached).

In summary, we thank you again for your detailed response, and we request continuing action on the following items:

- 1) We ask that EGLE calculate the impact of the damage caused by nonpoint sediment runoff from MAEDA’s MAJOR site between June and August of 2024, and that the financial compensation be paid to the Kalamazoo River Watershed Council to for nonpoint pollution mitigation projects.
- 2) Deny all future permit renewals until all violations have been fully resolved, and MAEDA has made full financial compensation for damage.

Again, thank you for your attention to this very important matter; we look forward to your response.

Sincerely,

Marjorie Steele
EDRA of MI, founder & chair

co-signed:
Members of the Committee for Marshall – Not the Megasite

