

WANDA M. STOKES

Original Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE 30th	SUMMONS	CASE NO. 2022- 0080 CE
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Court address: 313 W. Kalamazoo St., Lansing, MI 48933
 Court telephone no. (517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).
 Michigan Department of Environment,
 Great Lakes, and Energy
 525 W. Allegan St.
 Lansing, MI 48933

Defendant's name(s), address(es), and telephone no(s).
 Steven Rogusta, President
 Village of Breedsville
 82 East Main St.
 Breedsville, MI 49027

v

Plaintiff's attorney, bar no., address, and telephone no.
 Jennifer Rosa (58226)
 Assistant Attorney General
 P.O. Box 30755
 Lansing, MI 48909
 (517) 335-7664/RosaJ4@michigan.gov

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date FEB 04 2022	Expiration date* MAY 13 2022	Court clerk ATV... / BS
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
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- I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint _____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____
 Name (type or print) _____
 Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments
 _____ on _____
Day, date, time
 _____ on behalf of _____
 Signature

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,

Plaintiff,

v

VILLAGE OF BREEDSVILLE,

Defendant.

No. 2022- -CE

HON.

008 n

WANDA M. STOKES

Jennifer Rosa (P58226)
Assistant Attorney General
Attorney for Plaintiff
Michigan Department of Attorney General
Environment, Natural Resources,
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
RosaJ4@michigan.gov

There is no other pending or resolved civil action
arising out of the transaction or occurrence
alleged in the complaint.

COMPLAINT

Plaintiff, the Michigan Department of Environment, Great Lakes, and
Energy (EGLE), by and through its attorney, Jennifer Rosa, Assistant Attorney
General, in support of its Complaint, states:

NATURE OF THE CASE

1. This is a civil action to obtain injunctive relief and civil fines against the Village of Breedsville (Defendant) for its failure to comply with the applicable requirements of state law when it placed fill material in a wetland, bottomland, and floodplain without a permit, failed to get a soil erosion and sedimentation control (SESC) permit or an approved SESC plan, and discharged sediment to the waters of the state without a permit. EGLE also seeks injunctive relief and civil fines for Defendant's failure to comply with the applicable requirements of state law for reconstructing a failed dam.

2. EGLE brings this action under Part 303, Wetland Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30301 *et seq.* EGLE also brings this action under Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 *et seq.*; Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*; Part 91, Soil Erosion and Sedimentation Control, of the NREPA, MCL 324.9101 *et seq.*; and Part 315, Dam Safety, of the NREPA, MCL 324.31501 *et seq.*

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under Section 30316(1) of the NREPA, MCL 324.30316(1), and Section 605 of the Revised Judicature Act, MCL 600.605. This Court also has jurisdiction over the subject matter of this action under Sections 3115(1), 9121(1), 30112(1), and 31524(4) of the

NREPA. MCL 324.3115(1); MCL 324.9121(1); MCL 324.30112(1); and MCL 324.31524(4).

4. This Court has personal jurisdiction over Defendant under Section 711 of the Revised Judicature Act. MCL 600.711.

5. Venue in this Court is proper under Section 30316(1) of the NREPA and under Sections 1631 and 1641 of the Revised Judicature Act. MCL 324.30316(1); MCL 600.1631(a); and MCL 600.1641(1).

PARTIES

6. EGLE is the state agency mandated to protect the natural resources of the state from pollution, impairment, and destruction. MCL 324.301; MCL 324.501; and Executive Order 2019-6.

7. The Village of Breedsville is a governmental entity located in Van Buren County, Michigan, that owns and controls parcels of land in the Village with tax property identification numbers 80-40-541-012-00 and 80-40-541-013-00 (hereinafter Property).

8. The Village of Breedsville is a “person” within the meaning of MCL 324.301(h).

STATUTORY AND REGULATORY BACKGROUND

9. Michigan enacted Part 303 of the NREPA to protect and conserve Michigan’s wetlands. MCL 324.30302.

10. Among other things, Part 303 of the NREPA prohibits depositing or permitting the placing of fill material in a wetland without a permit. MCL 324.30304(a).

11. Part 301 of the NREPA prohibits dredging or filling bottomlands and structurally interfering with the natural flow of an inland lake or stream without first obtaining a permit from EGLE. MCL 324.30102(1)(a) and (e).

12. Part 31 of the NREPA prohibits the occupation and/or filling or grading, or permitting the filling or grading, of land in a floodplain without a permit from EGLE. MCL 324.3108(1).

13. Part 31 of the NREPA also prohibits discharging into the waters of the state any substance that is or may become injurious to the public health, safety, or welfare or other uses of the waters. MCL 324.3109(1)(a) and (b).

14. Part 91 of the NREPA prohibits maintaining or undertaking an earth change, except in accordance with the rules promulgated by EGLE and as authorized by a permit. MCL 324.9112(1).

15. Pursuant to Part 91 of the NREPA, EGLE promulgated Mich Admin Code, R 323.1704(1), which requires a landowner to obtain a permit before undertaking an earth change which disturbs one or more acres of land, or which is within 500 feet of a lake or stream.

16. Pursuant to Part 91 of the NREPA, EGLE promulgated Mich Admin Code, Rule 323.1703, which requires a person to prepare an SESC plan for any earth change that is designed to effectively reduce soil erosion and sedimentation

and include that plan with the permit application under Mich Admin Code, Rule 323.1706.

17. "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may contribute to soil erosion or sedimentation of the waters of the state. MCL 324.9101(9).

18. "Soil erosion" means the wearing away of land by the action of wind, water, or gravity, or a combination of wind, water, or gravity. MCL 324.9101(17).

19. "Sediment" means solid particulate matter that is in suspension in water, is being transported or has been removed from its original site by wind, water, or gravity, and deposited elsewhere. MCL 324.9101(16).

20. When an earth change has occurred, Part 91 of the NREPA requires a landowner to implement and maintain soil erosion and sedimentation control measures on the land. MCL 324.9116.

21. Part 315 prohibits constructing a dam, altering a dam, or reconstructing a failed dam without obtaining a permit. MCL 324.31509.

ALLEGATIONS

22. Defendant owns the Property, which contains a parking lot and park next to the South Branch Black River.

23. On July 29, 2020, the staff of EGLE's Water Resources Division conducted an inspection at the Property and observed ongoing unauthorized placement of fill into an oxbow of the South Branch Black River.

24. The fill was placed on bottomlands, within wetlands, and within the 100-year floodplain and the floodway of the South Branch Black River.

25. No soil erosion and sedimentation control measures had been installed, and there was active discharge of sediment from the fill material into the river.

26. Defendant did not have an SESC permit or an approved SESC plan for the site.

27. Steven Rogusta, President of the Village of Breedsville, was on site during the inspection and staff informed him of the violations and advised him to stop the activity.

28. After the notification, Defendant proceeded to fill additional regulated areas, effectively rebuilding a portion of a previously existing dam that failed in 2008.

29. On August 5, 2020, EGLE sent a Violation Notice to Defendant requesting information and ordering restoration of the unauthorized impacts.

30. EGLE received no response from Defendant.

31. On August 21, 2020, EGLE staff conducted another inspection and observed that additional fill had been placed in the water and there was unstable soil with steep slopes to the water's edge, fill soils had entered the water, and there was no Part 91 SESC permit or plan on site.

32. On February 2, 2021, EGLE issued an enforcement notice for violations of Parts 31, 91, 301, and 303, of the NREPA and an additional violation of Part 315 of the NREPA for repairing or reconstructing a dam without a permit from EGLE.

33. On September 15, 2021, EGLE conducted an inspection of the Property and observed that additional fill had been placed in wetlands, on bottomlands, and within the 100-year floodplain.

34. To date, the regulated wetlands, bottomlands, and the floodplain and floodway of the river remain filled.

35. Defendant never submitted a permit application to EGLE for the unauthorized activities identified in this Complaint.

**COUNT I
Part 303 Violations**

36. Paragraphs 1 through 35 are hereby incorporated by reference and realleged.

37. Defendant deposited or permitted the placing of fill material in a regulated wetland without a permit or otherwise allowed by Part 303 of the NREPA, in violation of MCL 324.30304(a).

38. MCL 324.30316(1) subjects Defendant to a civil fine of up to \$10,000 per day of violation of Part 303 of the NREPA.

39. MCL 324.30316(4) authorizes this Court to require Defendant to restore the regulated wetlands affected by its violations to their original condition immediately before the violations.

**COUNT II
Part 301 Violations**

40. Paragraphs 1 through 39 are hereby incorporated by reference and realleged.

41. Defendant dredged or filled bottomland without first obtaining a permit from EGLE, in violation of MCL 324.30102(1)(a).

42. The violations subject Defendant to a civil fine of not more than \$5,000 per day for each day of violation, to restoration of the affected area to its prior condition before the violations, and to enjoin further violations. MCL 324.30112(1) and (2).

**COUNT III
Part 31 Violations**

43. Paragraphs 1 through 42 are hereby incorporated by reference and realleged.

44. Defendant occupied and/or filled or graded or permitted the filling or grading of a floodplain without a permit from EGLE, in violation of MCL 324.3108(1).

45. Defendant discharged a substance into the waters of the state that may become injurious to the public health, safety, or welfare of residents or may interfere with the recreational use of the waters, in violation of MCL 324.3109(1).

46. MCR 324.3115(1) authorizes the Court to impose a civil fine of not less than \$2,500, and not more than \$25,000 per day of violation, and to enjoin the Defendant from further violations.

COUNT IV
Part 91 Violations

47. Paragraphs 1 through 46 are hereby incorporated by reference and realleged.

48. Defendant knowingly maintained or undertook an earth change without a permit or an approved SESC plan, in violation of MCL 324.9112(1) and Mich Admin Code, R 323.1703, R 323.1704(1), and R 323.1706(2).

49. Defendant knowingly failed to implement and maintain soil erosion and sedimentation control measures to effectively reduce soil erosion or sedimentation from the land on which the earth change was made, in violation of MCL 324.9116.

50. The violations subject Defendant to a civil fine of not more than \$10,000 for each day of violation it knowingly violated Part 91 of the NREPA. MCL 324.9121(2).

COUNT V
Part 315 Violations

51. Paragraphs 1 through 50 are hereby incorporated by reference and realleged.

52. Defendant reconstructed a failed dam without obtaining a permit, in violation of MCL 324.31509(1).

53. As provided in MCL 324.31525, Defendant is subject to a civil fine of not more than \$10,000 for each day of violation, may be enjoined from further

violations, and may be required to restore the affected site to its original condition prior to the violations.

DEMAND FOR JUDGMENT

Plaintiff respectfully requests that this Honorable Court grant the following relief:

- A. Find that Defendant violated Part 303, Part 301, Part 31, Part 91, and Part 315 of the NREPA;
- B. Permanently enjoin Defendant from violating the NREPA;
- C. Order Defendant to restore the bottomland, wetland, and floodplain affected by its violations of the NREPA to the condition that existed immediately prior to the violations, including removing all the fill material to reestablish the natural stream bed and banks, planting wetland vegetation and monitoring the restored wetland and stream, stabilizing the site in accordance with Part 91 of the NREPA, and obtaining and implementing an SESC permit with an approved SESC plan;
- D. Order Defendant to pay the following civil fines: \$10,000 per day of violation of Part 303 of the NREPA; \$5,000 per day of violation of Part 301 of the NREPA; \$25,000 per day of violation of Part 31 of the NREPA; \$10,000 per day of knowing violation of Part 91 of the NREPA; and \$10,000 per day of violation of Part 315 of the NREPA;
- E. Order Defendant to pay reasonable attorney fees and costs of litigation; and

F. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Jennifer Rosa

Jennifer Rosa (P58226)

Assistant Attorney General

Attorney for Plaintiff

Michigan Department of Attorney

General

Environment, Natural Resources, and

Agriculture Division

P.O. Box 30755

Lansing, MI 48909

(517) 335-7664

RosaJ4@michigan.gov

Dated: February 3, 2022

LF: Village of Breedsville (EGLE)/AG# 2021-0315935-B-L/Complaint - 2022-02-03