

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 18- 238 -CE
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Court address: 313 West Kalamazoo Street, Lansing, MI 48933
 Court telephone no.: **ROSEMARIE E. AQUILINA** (517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Plaintiff's attorney, bar no., address, and telephone no.
Danielle Allison Yokom (P70950)
 Assistant Attorney General
 P.O. Box 30755
 Lansing, MI 48909
 (517) 373-7540

Defendant's name(s), address(es), and telephone no(s).
ROBERT EVANS, GLADWIN COUNTY DRAIN COMMISSIONER
 555 West Cedar Avenue
 County Annex Suite C
 Gladwin, MI 48624

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 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). (MCR 2.111(C))
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.

Issued APR 16 2018	This summons expires JUL 16 2018	Court clerk LORI LAFAVE mt
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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.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

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 _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Lansing, MI	Defendant(s) residence (include city, township, or village) Gladwin, MI
Place where action arose or business conducted Gladwin, MI	

Date: **4/13/18**
 Signature of attorney/plaintiff: *Danielle Allison Yokom*

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.

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

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 2018- 238 -CE

v

HON. ROSEMARIE E. AQUILINA

ROBERT EVANS, GLADWIN COUNTY
DRAIN COMMISSIONER,

Defendant.

Danielle Allison-Yokom (P70950)
Elizabeth Morrisseau (P81899)
Assistant Attorneys General
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Attorneys for Plaintiff

FILED
2018 JUN 13 10 45
Circuit Court
Ingham County
Michigan

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

COMPLAINT

1. Plaintiff, the Michigan Department of Environmental Quality (“DEQ”),
by and through its attorneys, Bill Schuette, Attorney General of the State of
Michigan, and Danielle Allison-Yokom and Elizabeth Morrisseau, Assistant
Attorneys General, state:

427771

NATURE OF THE CASE

2. This is a civil action to obtain injunctive relief to require Defendant Robert Evans, the Gladwin County Drain Commissioner, (“Commissioner”) to protect surface water and prevent soil erosion and sedimentation. The Commissioner repeatedly violated Parts 31 and 91 of the Natural Resources and Environmental Protection Act (“NREPA”), MCL 324.101 *et seq.*, and related rules. The DEQ also seeks civil fines, attorney fees, costs of surveillance and enforcement, and costs.

3. The DEQ brings this action under Part 31, Water Resources Protection, of NREPA, MCL 324.3101 *et seq.* The DEQ also brings this action under Part 91, Soil Erosion and Sedimentation Control, of NREPA, MCL 324.9101 *et seq.*

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under NREPA and the Revised Judicature Act. MCL 324.3115(1), MCL 324.9113(1), MCL 324.9121, and MCL 600.605.

5. This Court has personal jurisdiction over the Commissioner under the Revised Judicature Act. MCL 600.711.

6. Venue in this Court is proper under NREPA and the Revised Judicature Act. MCL 324.3115(1), MCL 324.9113(1), and MCL 600.1631(a).

PARTIES

7. The DEQ 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 2011-1.

8. From June 10, 2010 until present, the Commissioner has been the Gladwin County Drain Commissioner within the meaning of The Drain Code of 1956. MCL 280.4. At all times relevant to this complaint, the Commissioner has been responsible for all established county drains in Gladwin County. MCL 280.10.

STATUTORY AND REGULATORY BACKGROUND

9. Michigan enacted Part 31 of NREPA to protect and conserve the water resources of the state and to control pollution of surface and underground waters of the state and the Great Lakes. MCL 324.3103.

10. Section 3109(1) of NREPA, MCL 324.3109(1), states:

(1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:

- (a) To the public health, safety or welfare.
- (b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
- (c) To the value or utility of riparian lands.
- (d) To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.
- (e) To the value of fish and game.

11. Under NREPA, a person shall not discharge any waste or waste effluent into the waters of the state unless the person is in possession of a valid permit from the DEQ. MCL 324.3112(1).

12. Similarly, Congress created the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 USC 1251(a).

13. The Clean Water Act establishes a system of cooperative federalism that “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources[.]” 33 USC 1251(b).

Point source discharge permits

14. A cornerstone of the Clean Water Act is the National Pollutant Discharge Elimination System (“NPDES”), which is a point source discharge permitting program that controls and limits the discharge of pollutants into surface waters. *See* 33 USC 1342(a)(1). The Clean Water Act establishes requirements for NPDES permits, including that they contain discharge limits necessary to meet federal water quality standards. *Id.*

15. Under the Clean Water Act, the United States Environmental Protection Agency (“EPA”) can approve state programs for NPDES permits for states that have sufficient standards and resources. 33 USC 1342(b).

16. In October 1973, the EPA first authorized Michigan to implement the NPDES permitting program.

17. In addition to state authority under NREPA, Michigan also issues and enforces NPDES permits with EPA's approval under the Clean Water Act.

18. In 1999, the EPA updated NPDES regulations to, among other things, address storm water discharges from construction activity less than five acres but larger than one acre. 64 Fed Reg 68722 (Dec. 8, 1999).

19. The EPA's 1999 updates to the NPDES regulations include provisions drawn from Michigan's regulatory framework that reduce redundant permitting by allowing storm water discharge permits to incorporate soil erosion and sedimentation control permits by reference. 64 Fed Reg 68778.

20. The DEQ promulgated and duly updates rules to maintain federal approval of Michigan's NPDES permitting program. See Mich Admin Code, R 323.2101 *et seq.*

21. Those rules include the following definitions relevant to this complaint:

a. "Certified storm water operator" means an individual who is certified by the department pursuant to the provisions of section 3110 of part 31 of [NREPA] as properly qualified to operate treatment or control facilities for storm water discharges. [Mich Admin Code, R 323.2102(h).]

b. "Construction activity" means a man-made earth change or disturbance in the existing cover or topography of land for which a [NPDES] permit is required pursuant to the provisions of 40 CFR 122.26(a) (2000) and which is any of the following:

i. Five acres or more in size and defined as a construction activity pursuant to the provisions of 40 CFR 122.26(b)(14)(x) (2000).

ii. One acre or more in size and defined as a small construction activity pursuant to the provisions of 40 CFR 122.26(b)(15) (2000).

iii. Less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan if the larger common plan will ultimately disturb 1 acre or more. The term includes clearing, grading, and excavating activities. The term does not include the practices of clearing, plowing, and tilling soil and harvesting for the purpose of crop production. [Mich Admin Code, R 323.2102(k).]

c. "Site" means the area where a construction activity is physically located or conducted, including adjacent land that is used in connection with the construction activity. [Mich Admin Code, R 323.2104(n).]

22. The adopted federal definition of construction activity excludes routine maintenance "that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility." 40 CFR 122.26(b)(15)(i).

23. Michigan's rules establish a framework for obtaining permit authorization for storm water discharges associated with construction activity larger than five acres. Mich Admin Code, R 323.2190. Under that framework, before initiating construction activity, the construction permittee must file a signed

and administratively complete notice of coverage with the DEQ that includes, among other things, a copy of the soil erosion and sedimentation control permit for the site, a description of the nature of the construction activity, and the name and certification number of a certified storm water operator responsible for inspecting the construction activity. *Id.*

24. Owners and operators of construction activity greater than one acre but smaller than five acres automatically obtain storm water discharge permits and are not required to file a notice of coverage. *Id.*

25. Michigan's rules establish requirements to limit storm water discharge from construction activity greater than one acre including, among other things, certified storm water operator inspections, corrective action, and recordkeeping requirements. Mich Admin Code, R 323.2190(2)(d) and (e).

Soil erosion and sedimentation control permits

26. Michigan enacted Part 91 of NREPA to develop a unified program to protect the waters of the state from waste discharged by soil erosion and sedimentation. MCL 324.9104.

27. Part 91 establishes the following definitions relevant to this complaint:

- a. "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production. [MCL 324.9101(9).]

b. "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere. [MCL 324.9101(16).]

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

28. Under NREPA, no person may begin or continue an earth change without the proper permit. MCL 324.9112.

29. The DEQ promulgated rules to implement a unified soil erosion and sedimentation control permitting program in Michigan. See Mich Admin Code, R 323.1701 *et seq.*

30. Michigan's soil erosion and sedimentation control rules require that all earth changes be "conduct[ed] in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation." Mich Admin Code, R 323.1702(a).

31. Under those rules, with exceptions not relevant to this complaint, a person may not commence an earth change that disturbs more than one acre or is within 500 feet of the water's edge of a stream without first obtaining a soil erosion and sedimentation control permit. Mich Admin Code, R 323.1704.

32. In addition to obtaining a soil erosion and sedimentation control permit prior to commencing an earth change, the person responsible must also

prepare a soil erosion and sedimentation control plan and include that plan in the permit. Mich Admin Code, R 323.1703.

33. Further, all earth changes must be designed, constructed, and completed “in a manner that limits the exposed area of any disturbed land for the shortest possible period of time[.]” Mich Admin Code, R 323.1709.

34. Agencies of local governmental units may apply to the DEQ for designation as an authorized public agency. MCL 324.9110(1). To obtain authorization, agencies must demonstrate, among other things, that they have sufficient resources to administer soil erosion and sedimentation control procedures at least as protective as the procedures implemented under the Act. Authorized public agencies do not have to obtain soil erosion and sedimentation control permits for specific projects. MCL 324.9110(2) and (4).

ALLEGATIONS

35. At all times relevant to this complaint, the Commissioner was not an authorized public agency. See MCL 324.9110.

36. The Commissioner is a “person” within the meaning of MCL 324.301(h) and Mich Admin Code, R 323.2104(b).

37. The following waters in Gladwin County are each both “waters of the state” within the meaning of MCL 324.3101 and “inland streams” within the meaning of MCL 324.30101(h): (a) Nestor Drain; (b) Venison Creek; (c) Bear Creek; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

38. All earth changes within or directly next to an inland stream have associated point source discharges.

39. The Commissioner conducted work at the following locations that was construction activity, was not routine maintenance to maintain the original line, grade, or hydraulic capacity, and included earth changes: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

40. The Commissioner did not obtain a storm water discharge permit before beginning work at the following locations: (a) Venison Creek Drain; (b) Bear Creek Drain; (c) Burleson Drain; and (d) Davidson Creek.

41. The Commissioner did not obtain a soil erosion and sedimentation control permit before beginning work at the following locations: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

42. The Commissioner did not renew soil erosion and sedimentation control permits for work at the following locations: (a) Longstreth Drain and (b) Quillet Drain.

43. The Commissioner did not submit a complete soil erosion and sedimentation control plan for work at the following locations: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

44. The Commissioner did not ensure that a certified storm water operator perform weekly and post-precipitation inspections, take corrective action, and

maintain a log of such inspections and corrective actions for work at the following locations: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

45. The Commissioner did not install adequate soil erosion and sedimentation control measures for work at the following locations: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

46. The Commissioner did not complete earth changes in a manner that reduced accelerated soil erosion and sedimentation at the following locations: (a) Nestor Drain; (b) Venison Creek Drain; (c) Bear Creek Drain; (d) Longstreth Drain; (e) Burleson Drain; (f) Davidson Creek; and (g) Quillet Drain.

Nestor Drain

47. On January 3, 2012, the DEQ contacted the Commissioner by telephone to discuss his work on the Nestor Drain. During this telephone call, the Commissioner confirmed that the work at Nestor Drain was larger than one acre and that the Commissioner had not obtained a soil erosion and sedimentation control permit before starting the work. The DEQ informed the Commissioner that MCL 324.9112(1), among other regulatory provisions, establishes permitting requirements for all earth changes larger than one acre.

48. On January 30, 2012, the DEQ issued the Commissioner a violation notice detailing violations of Part 91 of NREPA and associated rules at the Nestor Drain site. The Commissioner did not respond to the DEQ.

Venison Creek Drain

49. On June 8, 2012, the DEQ inspected the Commissioner's work at the Venison Creek Drain site.

50. During the inspection, the DEQ determined that construction activity at the Venison Creek Drain site exceeded five acres.

51. At that time, the DEQ informed the Commissioner that he needed to submit a notice of coverage application for the Venison Creek Drain site to obtain a storm water discharge permit.

52. On October 3, 2012, the DEQ issued the commissioner a violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Venison Creek Drain site. The Commissioner did not respond to the DEQ.

53. On January 9, 2013, the DEQ again inspected the Commissioner's work at the Venison Creek Drain site.

54. During the inspection, the DEQ determined that sediment was discharging from the site into Venison Creek Drain.

55. On March 11, 2013, the DEQ issued a second violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Venison Creek Drain site. The Commissioner did not respond to the DEQ.

56. On June 3, 2015, the DEQ again inspected the Commissioner's work at the Venison Creek Drain site.

57. The DEQ determined that the previously cited violations at the Venison Creek Drain site were continuing.

58. On July 24, 2015, the DEQ issued the Commissioner a third violation notice alleging that the previously cited violations of Parts 31 and 91 of NREPA and associated rules were continuing at the Venison Creek Drain site. The Commissioner did not respond to the DEQ.

59. On October 13, 2016, the DEQ again inspected the Commissioner's work at the Venison Creek Drain site.

60. The DEQ again determined that the previously cited violations at the Venison Creek Drain site were continuing.

61. On September 6, 2017, the DEQ again inspected the Commissioner's work at the Venison Creek Drain site and determined that (1) the previously cited violations of Parts 31 and 91 of NREPA and associated rules were continuing; and (2) corrective action was necessary because of unstabilized banks and continuing erosion.

Bear Creek Drain

62. On June 8, 2012, the DEQ inspected the Commissioner's work at the Bear Creek Drain site.

63. During the inspection, the DEQ determined that construction activity at the Bear Creek Drain site exceeded five acres.

64. At that time, the DEQ informed the Commissioner that he needed to submit a notice of coverage application for the Bear Creek Drain site to obtain a storm water discharge permit.

65. On October 3, 2012, the DEQ issued the Commissioner a violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Bear Creek Drain site. The Commissioner did not respond to the DEQ.

66. On January 9, 2013, the DEQ again inspected the Commissioner's work at the Bear Creek Drain site.

67. During the inspection, the DEQ determined that sediment was discharging from the site into Bear Creek Drain.

68. On March 11, 2013, the DEQ issued the Commissioner a second violation notice detailing continuing violations of Parts 31 and 91 of NREPA and associated rules. The Commissioner did not respond to the DEQ.

Longstreth Drain

69. On June 8, 2012 and January 9, 2013, the DEQ inspected the Commissioner's work at the Longstreth Drain site.

70. During each inspection, the DEQ determined that sediment was discharging from the site into Longstreth Drain. The DEQ also determined that construction activity at the Longstreth Drain site exceeded one acre.

71. On May 7, 2015, the DEQ again inspected the Commissioner's work at the Longstreth Drain site.

72. The DEQ determined that the banks at the Longstreth Drain site still had not been stabilizing and were eroding.

73. The DEQ further determined that the Commissioner did not remove sediment caused by accelerated soil erosion from runoff water before it left the site.

74. On July 24, 2015, the DEQ issued the Commissioner a violation notice detailing continuing violations of Parts 31 and 91 of NREPA and associated rules at the Longstreth Drain site. The Commissioner did not respond to the DEQ.

Burleson Drain

75. On May 8, 2013 and June 6, 2013, the DEQ inspected the Commissioner's work at the Burleson Drain site.

76. During both inspections, the Commissioner informed the DEQ that construction activity at the Burleson Drain site began in July 2012 and ended in September 2012. The DEQ also determined that construction activity at the Burleson Drain site exceeded five acres.

77. During the inspections, the DEQ determined that the banks at the Burleson Drain site were void of vegetation. The DEQ also determined that spoils piles created by the Commissioner's work were never stabilized and as a result were eroding and discharging sediment into Burleson Drain.

78. The DEQ further observed areas of severe erosion and sedimentation caused by the Commissioner's work at the Burleson Drain site.

79. The Commissioner told the DEQ that he did not stabilize the disturbed areas after concluding work at the Burleson Drain site.

80. On July 12, 2013, the DEQ issued the Commissioner a violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Burleson Drain site. The Commissioner did not respond to the DEQ.

81. On September 13, 2013, the DEQ again inspected the Commissioner's work at the Burleson Drain site.

82. The DEQ determined that the previously cited violations were continuing, and that the Commissioner had taken no steps to address erosion or sedimentation.

83. The DEQ also observed that the Commissioner had commenced new construction activity at the Burleson Drain site.

84. The DEQ observed erosion of the banks and sediment in the bottom of Burleson Drain.

85. On December 13, 2013, the DEQ issued the Commissioner a second violation notice detailing continuing violations of Part 31 and 91 of NREPA and associated rules at the Burleson Drain site. The Commissioner did not respond to the DEQ.

86. On April 11 and August 13, 2014, the DEQ again inspected the Commissioner's work at the Burleson Drain site.

87. The DEQ determined that the violations previously alleged in the 2012 and 2013 violation notices were continuing.

88. The DEQ also found that the upstream portion of the Burleson Drain had areas of severe bank erosion, that there was sediment in Burleson Drain, that the banks were unstabilized, and that there was erosion at the ends of the culvert.

89. On September 25, 2014, the DEQ issued the Commissioner a third violation notice alleging continuing violations of Parts 31 and 91 of NREPA and

associated rules at the Burleson Drain site. The Commissioner did not respond to the DEQ.

90. On May 7, 2015, the DEQ again inspected the Commissioner's work at the Burleson Drain site and determined that the violations alleged in the three previous violation notices were continuing.

91. On July 24, 2015, the DEQ issued the Commissioner a fourth violation notice alleging continuing violations of Parts 31 and 91 of NREPA and associated rules at the Burleson Drain site. The Commissioner did not respond to the DEQ.

92. On October 13, 2016, the DEQ again inspected the Commissioner's work at the Burleson Drain site and determined that the violations alleged in the four previous violation notices were continuing.

93. On September 6, 2017, the DEQ again inspected the Commissioner's work at the Burleson Drain site and determined that (1) the previously cited violations of Parts 31 and 91 of NREPA and associated rules were continuing; and (2) corrective action was necessary because of unstabilized banks and continuing erosion.

Davidson Creek

94. The DEQ inspected the Commissioner's work at the Davidson Creek site on May 8, May 28, and June 6, 2013.

95. During the inspections at the Davidson Creek site, the DEQ determined that the construction activity was greater than five acres.

96. During the inspections at the Davidson Creek site, the Commissioner informed the DEQ that construction activity commenced prior to January 2012 and continued until May of 2013.

97. During the inspections at the Davidson Creek site, the DEQ determined that the banks and spoils at the Davidson Creek site were void of vegetation.

98. The DEQ further observed areas of severe erosion and sedimentation caused by the Commissioner's work at the Davidson Creek site.

99. The DEQ did not observe any signs indicating that the Commissioner performed any soil stabilization methods at the Davidson Creek site.

100. The DEQ determined that the Commissioner did not remove sediment caused by accelerated soil erosion from runoff water before it left the Davidson Creek site.

101. On July 12, 2013, the DEQ issued the Commissioner a violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Davidson Creek site. The Commissioner did not respond to the DEQ.

102. On September 13, 2013, April 11, 2014, and April 13, 2014, the DEQ again inspected the Davidson Creek site and determined that the previously cited violations were continuing.

103. The DEQ also observed eroded banks, spoils in large piles at the top of the bank with signs of erosion, and sediment in Davidson Creek.

104. The DEQ did not observe any indication that the Commissioner had attempted to stabilize the banks or otherwise prevent erosion and sedimentation.

105. On September 25, 2014, DEQ issued the Commissioner a second violation notice alleging continuing violations of Parts 31 and 91 of NREPA and associated rules at the Davidson Creek site. The Commissioner did not respond to the DEQ.

106. On May 7, 2015, the DEQ again inspected the Commissioner's work at the Davidson Creek site and determined that the violations alleged in the two previous violation notices were continuing.

107. On July 24, 2015, the DEQ issued the Commissioner a third violation notice alleging continuing violations of Parts 31 and 91 of NREPA and associated rules at the Davidson Creek site. The Commissioner did not respond to the DEQ.

108. On October 13, 2016 and October 20, 2016, the DEQ again inspected the Commissioner's work at the Davidson Creek site and determined that the violations alleged in the three previous violation notices were continuing.

109. On September 6, 2017, the DEQ again inspected the Commissioner's work at the Davidson Creek site and determined that (1) the previously cited violations of Parts 31 and 91 of NREPA and associated rules were continuing; and (2) corrective action was necessary because of unstabilized banks and continuing erosion.

Quillet Drain

110. The DEQ received a citizen complaint regarding the Commissioner's work at the Quillet Drain site on September 19, 2013. The complainant stated that

the Commissioner began work in June 2012 and that the site appeared to be unstabilized more than one year later.

111. The DEQ inspected the Quillet Drain site on October 4, 2013, and determined that the site had unstabilized banks, unstabilized spoils piles, and multiple areas of severe erosion along the banks. The DEQ further determined that the construction activity was larger than one acre but did not exceed five acres.

112. On June 3, 2015, the DEQ again inspected the Commissioner's work at the Quillet Drain site and determined that the banks had still not been stabilized and were eroding.

113. The DEQ determined that the Commissioner failed to remove sediment caused by accelerated soil erosion from runoff water before it left the Quillet Drain site.

114. On July 24, 2015, the DEQ issued the Commissioner a violation notice detailing violations of Parts 31 and 91 of NREPA and associated rules at the Quillet Drain site. The Commissioner did not respond to the DEQ.

115. On October 21, 2016, the DEQ again inspected the Commissioner's work at the Quillet Drain site and determined that the violations alleged in the previous violation notice were continuing.

116. On September 6, 2017, the DEQ again inspected the Commissioner's work at the Quillet Drain site and determined that (1) the previously cited violations of Parts 31 and 91 of NREPA and associated rules were continuing; and (2) corrective action was necessary because of unstabilized banks and continuing erosion.

COUNT I

PART 31 WATER RESOURCE PROTECTION VIOLATIONS

117. Paragraphs 1 through 116 are hereby realleged and incorporated by reference.

118. The Commissioner failed to file a notice of coverage and obtain a storm water discharge permit for construction activity greater in size than five acres at the Venison Creek Drain, Bear Creek Drain, Burleson Drain, and Davidson Creek sites, in violation of MCL 324.3112(1) and Mich Admin Code, R 323.2190.

119. Prior to January 2013, the Commissioner failed to comply with a soil erosion and sedimentation control permit; maintain and operate soil erosion control measures; and cause a certified storm water operator to supervise work, perform inspections, and take corrective actions at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of Mich Admin Code, R 323.2190(2)(b), (c), (d), and (e).

120. The Commissioner failed to perform weekly and post-precipitation inspections and take corrective action at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of Mich Admin Code, R 323.2190(2)(e).

121. The Commissioner failed to maintain records of inspections and corrective actions at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of Mich Admin Code, R 323.2190(2)(e).

122. MCL 324.3115(1) subjects the Commissioner to a civil fine of at least \$2,500 per violation of Part 31 and up to \$25,000 per day of violation of Part 31.

123. MCL 324.3115 authorizes this Court to require the Commissioner to comply with water resource protection laws and also to award reasonable attorney fees and costs to the prevailing party.

COUNT II

PART 91 SOIL EROSION AND SEDIMENT CONTROL VIOLATIONS

124. Paragraphs 1 through 123 are hereby realleged and incorporated by reference.

125. The Commissioner did not obtain soil erosion and sedimentation control permits before commencing earth changes at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of MCL 324.9112 and Mich Admin Code, R 323.1704.

126. The Commissioner did not complete soil erosion and sedimentation control plans before commencing earth changes at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of Mich Admin Code, R 323.1703.

127. The Commissioner did not install soil erosion and sedimentation control measures at the Nestor Drain, Venison Creek Drain, Bear Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in violation of Mich Admin Code, R 323.1709.

128. The Commissioner did not design, construct, or complete earth changes at the Nestor Drain, Bear Creek Drain, Venison Creek Drain, Burleson Drain, Davidson Creek, Longstreth Drain, and Quillet Drain sites in a timely manner to limit erosion and sedimentation, in violation of Mich Admin Code, R 323.1709.

129. Since at least January 4, 2012, the Commissioner knowingly violated Part 91 of NREPA at the Nestor Drain site.

130. Since at least June 8, 2012, the Commissioner knowingly violated Part 91 of the Act at the Venison Creek Drain, Bear Creek Drain, and Longstreth Drain sites.

131. Since at least May 8, 2013, the Commissioner knowingly violated Part 91 of NREPA at the Burleson Drain and Davidson Creek sites.

132. Since at least October 4, 2013, the Commissioner knowingly violated Part 91 of NREPA at the Quillet Drain site.

133. Under Part 91 of NREPA, the Commissioner is subject to a civil fine of not more than \$2,500 for each soil erosion and sedimentation control violation. MCL 324.9121(1).

134. Under Part 91 of NREPA, the Commissioner is subject to a civil fine of not more than \$10,000 per day per knowing soil erosion and sedimentation control violation. MCL 324.9121(2).

135. Under Part 91 of NREPA, this Court may order the Commissioner to restore the areas affected by these violations to their pre-violation condition. MCL 324.9121(6).

DEMAND FOR JUDGMENT

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

- A. Permanently enjoin the Commissioner from violating Parts 31 and 91 of NREPA and associated rules;
- B. Order the Commissioner to achieve, maintain, and demonstrate compliance with Parts 31 and 91 of NREPA and associated rules;
- C. Order the Commissioner to take appropriate actions to remedy the violations of Parts 31 and 91 of NREPA and associated rules;
- D. Order the Commissioner to pay civil fines of \$25,000 per day of violation of Part 31 of NREPA;
- E. Order the Commissioner to pay civil fines of \$2,500 for each violation of Part 91 of NREPA;
- F. Order the Commissioner to pay civil fines of \$10,000 per day per knowing violation of Part 91 of NREPA;
- G. Order the Commissioner to restore all areas affected by violations of Part 91 of NREPA to the condition that existed immediately prior to the violations;
- H. Order the Commissioner to pay reasonable attorney fees and costs of litigation resulting from the Commissioner's violations of Parts 31 and 91 of NREPA and associated rules;
- I. Order the Commissioner to pay the costs of surveillance and enforcement by the state resulting from the Commissioner's violations of Parts 31 and 91 of NREPA and associated rules;

J. Order the Commissioner not to violate any other environmental laws or rules in complying with this order; and

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

Respectfully submitted,

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Dated: April 13, 2018

LF: Gladwin County Drain Commission#2017-0191172-A-G/Complaint 2018-4-13