

**SUBSTITUTE FOR
SENATE BILL NO. 849**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 32723 (MCL 324.32723), as amended by 2008 PA
180, and by adding section 1708.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 1708. (1) Notwithstanding any authorization or permit**
2 **granted under a zoning ordinance for the extraction of aggregates**
3 **by mining, the extraction of aggregates by mining shall not**
4 **pollute, impair, or destroy natural resources.**

5 **(2) Subsection (1) is subject to enforcement under this part.**

6 **(3) The excavation and removal of aggregates and of associated**
7 **overburden does not, of itself, constitute pollution, impairment,**
8 **or destruction of those natural resources.**



1 Sec. 32723. (1) Except as provided in subsection **(14)**, the
2 following persons shall obtain a water withdrawal permit prior to
3 making the withdrawal:

4 (a) A person who proposes to develop withdrawal capacity to
5 make a new withdrawal of more than 2,000,000 gallons of water per
6 day from the waters of the state to supply a common distribution
7 system.

8 (b) A person who proposes to develop increased withdrawal
9 capacity beyond baseline capacity of more than 2,000,000 gallons of
10 water per day from the waters of the state to supply a common
11 distribution system.

12 (c) A person who proposes to develop withdrawal capacity to
13 make a new or increased large quantity withdrawal of more than
14 1,000,000 gallons of water per day from the waters of the state to
15 supply a common distribution system that a site-specific review has
16 determined is a zone C withdrawal.

17 (d) A person who proposes to develop a new or increased
18 withdrawal capacity that will result in an intrabasin transfer of
19 more than 100,000 gallons per day average over any 90-day period.

20 **(e) A person who proposes to use the water withdrawal for the**
21 **extraction of aggregates by mining.**

22 (2) A person shall apply for a water withdrawal permit under
23 this section by submitting an application to the department
24 containing the information described in section ~~32706e(1)(a) to (e)~~
25 **32706c(4)(a) to (e)** and an evaluation of existing hydrological and
26 hydrogeological conditions. If the applicant proposes to undertake
27 a preventative measure along with the withdrawal, the property
28 owner shall provide the department with a detailed description of
29 the preventative measure and relevant information as to how the



1 preventative measure will be implemented. In addition, the
 2 applicant shall submit an application fee in the amount of
 3 \$2,000.00. The department shall transmit application fees collected
 4 under this section to the state treasurer to be credited to the
 5 water use protection fund created in section 32714.

6 (3) An application submitted under subsection (2) is
 7 considered to be administratively complete effective 30 days after
 8 it is received by the department unless the department notifies the
 9 applicant, in writing, during this 30-day period that the
 10 application is not administratively complete or that the fee
 11 required to ~~be accompanied with~~ **accompany** the application has not
 12 been paid. If the department determines that the application is not
 13 administratively complete, the notification shall specify the
 14 information necessary to make the application administratively
 15 complete. If the department notifies the applicant as provided in
 16 this subsection, the 30-day period is tolled until the applicant
 17 submits to the department the specified information or fee.

18 (4) The department shall provide public notification of its
 19 receipt of ~~applications~~ **an application** under this section and shall
 20 provide a public comment period of not less than 45 days before
 21 ~~applications are~~ **an application is** acted upon under subsection (5).

22 (5) The department shall make a decision whether to grant or
 23 deny a water withdrawal permit under this section within 120 days
 24 of receipt of an administratively complete application.

25 (6) The department shall issue a water withdrawal permit under
 26 subsection (1)(a), (b), or (c), **or, subject to subsection (8),**
 27 **under subsection (1)(e)** if all of the following conditions are met:

28 (a) All water withdrawn, less any consumptive use, is
 29 returned, either naturally or after use, to the source watershed.



1 (b) The withdrawal will be implemented so as to ensure that
2 the proposal will result in no individual or cumulative adverse
3 resource impacts. Cumulative adverse resource impacts under this
4 subdivision shall be evaluated by the department based upon
5 available information gathered by the department.

6 (c) Subject to section 32726, the withdrawal will be
7 implemented so as to ensure that it is in compliance with all
8 applicable local, state, and federal laws as well as all legally
9 binding regional interstate and international agreements, including
10 the boundary waters treaty of 1909.

11 (d) The proposed use is reasonable under common law principles
12 of water law in Michigan. **this state.**

13 (e) ~~For permit applications received on or after January 1,~~
14 ~~2009, the~~ **The** applicant has self-certified that he or she is in
15 compliance with environmentally sound and economically feasible
16 water conservation measures developed by the applicable water
17 user's sector under section 32708a or has self-certified that he or
18 she is in compliance with environmentally sound and economically
19 feasible water conservation measures developed for the water use
20 associated with that specific withdrawal.

21 (f) The department determines that the proposed withdrawal
22 will not violate public or private rights and limitations imposed
23 by Michigan water law or other Michigan common law duties.

24 (7) The department shall issue a water withdrawal permit under
25 subsection (1)(d) if the transfer complies with section 4.9 of the
26 compact.

27 **(8) If a person is required to obtain a permit under**
28 **subsection (1)(e) and the aggregates mining area is located**
29 **adjacent to a site listed on the United States Environmental**



1 Protection Agency's superfund national priorities list or is
2 subject to a superfund alternative approach agreement under the
3 comprehensive environmental response, compensation, and liability
4 act, 42 USC 9601 to 9675, the person shall notify the department at
5 least 30 days before beginning installation of the well. In
6 addition, the department shall not issue a water withdrawal permit
7 for the well unless all of the following requirements are met:

8 (a) The distance of the well from the superfund site will
9 equal or exceed the radius of the standard isolation area for a
10 type I or type IIa public water supply well from sources of
11 contamination as provided under the safe drinking water act, 1976
12 PA 399, MCL 325.1001 to 324.1023, and rules promulgated thereunder.

13 (b) Monitoring wells will be installed and monitoring
14 conducted at locations agreed upon by the applicant and the
15 department or the United States Environmental Protection Agency.

16 (c) Monitoring results under subdivision (b) will be reported
17 to the United States Environmental Protection Agency superfund site
18 administrator responsible for the superfund site on a regular basis
19 and immediately if a monitoring alert is triggered.

20 (9) ~~(8)~~—In reviewing a proposed preventative measure, the
21 department shall consider the effect of the preventative measure on
22 preventing an adverse resource impact by diminishing the effect of
23 the withdrawal on stream or river flow or the temperature regime of
24 the stream or river. If the department approves a preventative
25 measure in conjunction with a water withdrawal permit under this
26 section, the department shall enter into a legally enforceable
27 implementation schedule for completion of the preventative measure.

28 (10) ~~(9)~~—A proposed use for which a water withdrawal permit is
29 issued under this section shall be considered to satisfy the



1 requirements of section 4.11 of the compact.

2 **(11)** ~~(10)~~—A permit issued under part 31 pursuant to 33 USC
3 1326(b) shall be considered sufficient to demonstrate that there
4 will not be an adverse resource impact under section 32721 and
5 satisfies the conditions for a water withdrawal permit under this
6 section. Upon receipt of an application under this section and
7 evidence that the applicant holds a part 31 permit described in
8 this subsection, the department shall grant the applicant a water
9 withdrawal permit under this subsection.

10 **(12)** ~~(11)~~—The department may revoke a water withdrawal permit
11 issued under this section if the department determines following a
12 hearing, based upon clear and convincing scientific evidence, that
13 the withdrawal is causing an adverse resource impact.

14 **(13)** ~~(12)~~—A person who is aggrieved by a determination of the
15 department under this section related to a water withdrawal permit
16 may file a sworn petition with the department setting forth the
17 grounds and reasons for the complaint and asking for a contested
18 case hearing on the matter pursuant to the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A
20 petition filed more than 60 days after action on the water
21 withdrawal permit may be rejected by the department as being
22 untimely. The department shall issue a final decision on a petition
23 for a contested case hearing within 6 months after receiving the
24 petition. A determination, action, or inaction by the department
25 following a contested case hearing is subject to judicial review as
26 provided in the administrative procedures act of 1969, 1969 PA 306,
27 MCL 24.201 to 24.328.

28 **(14)** ~~(13)~~—The following withdrawals are not required to obtain
29 a water withdrawal permit under this section:



1 (a) A withdrawal by a community supply that holds a permit
2 under the safe drinking water act, 1976 PA 399, MCL 325.1001 to
3 325.1023.

4 (b) Seasonal withdrawals of not more than 2,000,000 gallons of
5 water per day average in any consecutive 90-day period to supply a
6 common distribution system unless the withdrawals result in a
7 diversion.

8 (c) A withdrawal for the production of bottled drinking water
9 approved by the department under a water source review conducted
10 under section 17 of the safe drinking water act, 1976 PA 399, MCL
11 325.1017.

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No. 431 of the 100th Legislature is enacted into
14 law.