



October 29, 2013

House Natural Resources Committee
Lansing, Michigan

Re: HB 4401 – Mining operation – creation of lakes

Dear Committee members,

The Michigan Environmental Council is a coalition of more than 65 environmental, conservation, and faith-based member groups located across the state. A number of these groups work exclusively on programs to protect Michigan lands and fresh water, and ensuring that development activities do not result in degradation of those resources and the aquatic species which rely on them to survive.

Under the Inland Lakes and Stream part of the Natural Resources and Environmental Protection Act a permit is required if activities create a lake more than 5 acres in size, but that lakes under 5 acres are already exempt. This legislation would remove the obligation to get a DEQ permit if such a lake is “managed” to remain under 5 acres through pumping or “other natural or artificial means.”

Primarily we concerned because the legislation essentially creates of situation in which after-the-fact permitting will become fairly routine, raising a range of water use and safety problems. By our reading, if a mining operation is not required to get a permit for a lake larger than 5 acres only due to the fact of active pumping or water management occurring, as anticipated in this legislation, often a permit will eventually be required when pumping stops.

The mining operations in question must already obtain a permit from the state if they either make a water withdrawal of over 100,000 gallons per day (Part 327) or discharge into the waters of the state (Part 31). It seems to us that if a lake of greater than 5 acres is anticipated to be created at some point, i.e., after pumping ceases, it would be most efficient if the state could issue all permits to the operation at the same time.

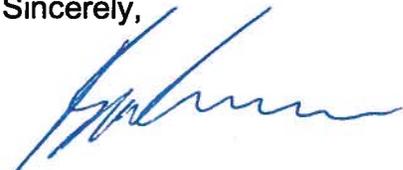
We believe there are other potential disadvantages to waiting until after the larger lake has been created to get the permit:

- 1) The creation of the lake could have negative impacts on other ponds or streams in the area. Property owner may have invested money in digging

- ponds on their property, just to see that investment disappear once excavation begins nearby and water tables are altered.
- 2) Riparian property owners on nearby streams may see a significant change of stream flow due to the excavation violating the reasonable use doctrine. They should be informed in advance, through normal permitting processes, of the nature of the operation and the possible impingement of their riparian rights.
 - 3) The committee should carefully explore the types of conditions or activity currently included in a permit, such as making sure that near-shore underwater slopes of the created lake do not represent a drowning hazard. These design issues should be addressed in advance, not after the lake has already been created.
 - 4) Lastly, after-the-fact permitting of larger lakes may result in instances where mining operations go bankrupt or lack sufficient resources to perform necessary future work to permit and stabilize larger lakes. This risk should not unnecessarily be shifted to the state when normal permitting processes would ensure consideration before operations to create a lake are undertaken.

In summary, the Michigan Environmental Council believes the risks and disadvantages of waiting until after the fact to issue permits far outweigh any potential benefits. Therefore, we ask members to oppose the current version of HB 4401.

Sincerely,



Brad Garmon
Director of Conservation and Emerging Issues