

SENATE BILL NO. 429

May 11, 2021, Introduced by Senators ANANICH and HOLLIER and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 9115 (MCL 324.9115), as amended by 2017 PA 40, and by adding part 639.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9115. (1) Subject to subsection (2), a person engaged in
2 the logging industry, the mining industry, or the plowing or
3 tilling of land for the purpose of crop production or the
4 harvesting of crops is not required to obtain a permit under this

1 part. However, all earth changes associated with the activities
2 listed in this section shall conform to the same standards as if
3 they required a permit under this part. The exemption from
4 obtaining a permit under this subsection does not include either of
5 the following:

6 (a) Access roads to and from the site where active mining or
7 logging is taking place.

8 (b) Ancillary activities associated with logging and mining.

9 (2) This part does not apply to a metallic mineral **or sand and**
10 **gravel** mining activity that is regulated under a mining and
11 reclamation plan under part 631, ~~or 634 or~~ a mining, reclamation,
12 and environmental protection plan under part 632, **a mining and**
13 **reclamation plan under part 634, or a mining and reclamation plan**
14 **under part 639**, if the plan contains soil erosion and sedimentation
15 control provisions and is approved by the department **under part**
16 **631, 632, 634, or 639, respectively.**

17 (3) A person is not required to obtain a permit from a county
18 enforcing agency or a municipal enforcing agency for earth changes
19 associated with well locations, surface facilities, flowlines, or
20 access roads relating to oil or gas exploration and development
21 activities regulated under part 615 or mineral well exploration and
22 development activities regulated under part 625, if the application
23 for a permit to drill and operate contains a soil erosion and
24 sedimentation control plan that is approved by the department under
25 part 615 or 625, **respectively.** However, those earth changes shall
26 conform to the same standards as required for a permit under this
27 part. This subsection does not apply to a multisource commercial
28 hazardous waste disposal well as defined in section 62506a.

29 (4) As used in this section, "mining" does not include the

1 removal of clay, gravel, sand, peat, or topsoil unless authorized
2 by a permit under part 639.

3 PART 639. SAND AND GRAVEL MINING

4 Sec. 63901. As used in this part:

5 (a) "Administratively complete" describes an application for a
6 mining permit that contains all of the documents and information
7 required under this part.

8 (b) "Department" means the department of environment, Great
9 Lakes, and energy.

10 (c) "De minimis extraction" means extraction of sand and
11 gravel that meets either of the following requirements:

12 (i) Is conducted by or for a property owner for end use by that
13 property owner on the same property, and not for resale or
14 inclusion in any other commercial product.

15 (ii) Does not exceed 5,000 cubic yards of sand and gravel
16 during the life of the mine.

17 (d) "Fencing" means 4-foot-high woven wire farm fence or its
18 equivalent.

19 (e) "Hearing" means a hearing under chapter 4 of the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
21 24.288.

22 (f) "In existence" or "existing" describes active or
23 previously active mining areas that have not yet been fully
24 reclaimed.

25 (g) "Life of the mine" means the period of time from issuance
26 of a mining permit through the completion of reclamation of the
27 mine as required by this part.

28 (h) "Mine" means a sand and gravel mine.

29 (i) "Mining" means sand and gravel mining and processing,

1 including associated loading of trucks and transporting sand and
2 gravel by truck.

3 (j) "Mining area" means an area comprising all of the
4 following, whether or not below the water table:

5 (i) Land from which material is removed in connection with the
6 production or extraction, other than de minimis extraction, of sand
7 and gravel by surface or open pit mining methods.

8 (ii) Land where material from that mining is stored on the
9 surface.

10 (iii) Land on which processing plants and auxiliary facilities
11 are located.

12 (iv) Land on which water reservoirs used in mining are located.

13 (v) Auxiliary land used in conjunction with mining.

14 (k) "Mining permit" means a sand and gravel mining permit
15 issued under section 63906.

16 (l) "Operator" means a person engaged in or preparing to engage
17 in mining or reclamation.

18 (m) "Primary road" means a county primary road as described in
19 section 5 of 1951 PA 51, MCL 247.655, or a state trunk line highway
20 as described in section 1 of 1951 PA 51, MCL 247.651.

21 (n) "Property line" means the exterior property line of all
22 contiguous parcels owned or controlled by the operator, including,
23 but not limited to, easements, leasehold interests, options to
24 lease, options to purchase, and rights of first offer or refusal.

25 (o) "Sand and gravel" means sand or gravel, or both, that is
26 excavated from natural deposits on or in the earth for commercial,
27 industrial, or construction purposes. However, sand and gravel does
28 not include limestone or limestone products; sand mined for
29 commercial or industrial purposes from sand dune areas regulated

1 under part 637; or earth materials associated with extraction of
2 coal regulated under part 635, nonferrous metallic minerals
3 regulated under part 632, or ferrous minerals regulated under part
4 631.

5 (p) "Sand and gravel products" means those products produced
6 from the processing of sand and gravel and other materials,
7 including recycled materials and other materials obtained from off-
8 site.

9 (q) "Sequence of mining" means the order in which the property
10 will be mined and reclaimed.

11 (r) "Stockpile" means material, including, but not limited to,
12 surface overburden, that in the process of mining has been removed
13 from the earth and stored on the surface.

14 (s) "Supervisor of reclamation" means the state geologist.

15 Sec. 63902. (1) Subject to subsection (2) and notwithstanding
16 section 63903, this part does not apply to either of the following
17 unless the owner or operator elects to be subject to this part by
18 submitting an application to the department under section 63904:

19 (a) A mine or mining operation in existence and authorized for
20 mining before the effective date of the amendatory act that added
21 this section.

22 (b) A mine with a total sand and gravel deposit of 1,000,000
23 tons or less.

24 (2) This part applies to an expansion of mining into an area
25 not authorized for mining on the effective date of the amendatory
26 act that added this section.

27 (3) For purposes of this section, mining is considered
28 authorized if either of the following applies:

29 (a) It has received a local permit for mining, zoning

1 approval, or other governmental authorization.

2 (b) It is not required to have obtained an authorization,
3 described in subdivision (a), because of nonregulation or because
4 the mining is a legal nonconforming use.

5 Sec. 63903. This part preempts an ordinance, regulation,
6 resolution, policy, or practice of a governmental authority created
7 by statute, municipality, or county that prohibits or regulates the
8 location, development, or operation, including processing
9 activities, of a mine, or trucking activities of or relating to a
10 mine, or that would duplicate, modify, extend, revise, contradict,
11 or conflict with this part. A governmental authority created by
12 statute, municipality, or county shall not adopt, maintain, or
13 enforce an ordinance, regulation, resolution, policy, or practice
14 in relation to mining that duplicates, is different from, extends,
15 revises, contradicts, is more strict than, or conflicts in any
16 manner with this part.

17 Sec. 63904. (1) Except for de minimis extraction or for
18 activities exempt under section 63902, a person shall not engage in
19 mining except as authorized by a mining permit.

20 (2) To obtain a mining permit, a person shall submit an
21 application to the department. The application shall contain the
22 name and address of the applicant and the location, including a
23 legal description and survey, of the proposed mining area. An
24 application shall be submitted on a form and in a medium provided
25 or approved by the department.

26 (3) A mining permit application shall be accompanied, at a
27 minimum, by all of the following:

28 (a) An application fee of \$5,000.00. The department shall
29 forward the application fee to the state treasurer for deposit in

1 the sand and gravel surveillance fund created in section 63921.

2 (b) An environmental impact assessment for the proposed mining
3 that describes the natural and human-made features, including
4 flora, fauna, hydrology, geology, and baseline conditions in the
5 proposed mining area, and the potential impacts on those features
6 from the proposed mining.

7 (c) A mining and reclamation plan for the proposed mining
8 operation that complies with section 63905.

9 (d) Financial assurance as described in section 63913.

10 Sec. 63905. (1) A mining and reclamation plan required under
11 section 63904 shall include all of the following:

12 (a) A general description of materials, methods, and
13 techniques that will be utilized for mining.

14 (b) Plans for reclamation of the mining area following
15 cessation of mining.

16 (c) A general description of the sand and gravel deposit.

17 (d) The proposed sequence of mining, including proposed
18 phasing, if applicable.

19 (e) Surface overburden removal plans.

20 (f) The proposed depth from grade level from which the sand
21 and gravel will be removed.

22 (g) Provisions for grading, revegetation, and stabilization
23 that will minimize, to the extent practicable, soil erosion,
24 sedimentation, noise, airborne dust, and public safety concerns.
25 The provisions for grading shall include, but not be limited to,
26 both of the following:

27 (i) The reclaimed slopes of the banks of the excavation shall
28 not exceed 3 feet horizontal to 1 foot vertical measured from the
29 nearest setback line into any area disturbed by mining.

1 (ii) Where open water with a maximum depth in excess of 5 feet
2 results from mining, the reclaimed slope into the water shall not
3 exceed 5 feet horizontal to 1 foot vertical, maintained and
4 extended into the water to a depth of 5 feet.

5 (h) A site plan showing the proposed location of buildings,
6 equipment, stockpiles, roads, berms, or other features necessary
7 for mining and including provisions for their removal and
8 reclamation of the area following cessation of mining. The site
9 plan shall comply with all of the following:

10 (i) A mining area shall be located not less than 50 feet from
11 the nearest public roadway or adjoining property line.

12 (ii) Equipment used for screening and crushing shall be located
13 as follows:

14 (A) Not less than 200 feet from the nearest public roadway.

15 (B) Not less than 300 feet from the nearest adjoining property
16 line.

17 (C) Not less than 400 feet from the nearest residential
18 dwelling occupied on adjacent property on the date the mining and
19 reclamation plan is submitted to the department.

20 (iii) The site plan shall describe the proposed primary routes
21 to be used to transport sand and gravel from the mining area to a
22 primary road, other than for local deliveries.

23 (iv) The operator shall maintain on the boundaries of the
24 mining area outward facing signage, spaced no greater than every
25 200 feet, specifying "No Trespassing - Mining Area".

26 (v) A stockpile shall not exceed the higher of 70 feet above
27 the ground surface at the location of the stockpile or 40 feet
28 higher than the elevation of the adjoining property at the nearest
29 property line. This subparagraph does not apply to screening berms.

1 (vi) An active mining area shall be screened from view from
2 adjoining properties to the extent reasonably practicable. The
3 screening shall be accomplished by using overburden, to the extent
4 available, to construct berms of up to 6 feet in height along
5 adjoining property boundaries, unless the applicant requests and
6 the department approves a different method of screening. The
7 department may require berms visible to the public to be landscaped
8 with grass or trees to the extent reasonably practicable.

9 (i) The interim use or uses of reclaimed areas before the
10 cessation of all mining.

11 (j) If required by the department when the mining area will
12 present a dangerous condition if left open, a proposal delineating
13 fencing or other techniques to minimize trespass or unauthorized
14 access to the mining area.

15 (k) If threatened or endangered species are identified within
16 the mining area, an indication of how the threatened or endangered
17 species will be protected or, if not protected, what mitigation
18 measures will be performed, in compliance with part 365 and rules
19 promulgated thereunder and the endangered species act of 1973, 16
20 USC 1531 to 1544, and rules promulgated thereunder.

21 (l) A description of measures to be implemented to ensure both
22 of the following:

23 (i) That all mined material disposed of within the mining area
24 and all areas to be reclaimed under the mining permit will not
25 result in an unauthorized release of pollutants to the surface
26 drainage system.

27 (ii) That an unauthorized release of pollutants to groundwater
28 will not occur from any material mined, handled, or disposed of
29 within the mining area.

1 (m) A description of measures to be implemented to ensure that
2 the mining does not create dust, noise, or ground vibration in
3 excess of the following standards:

4 (i) For dust control, the standards required pursuant to any
5 applicable general or individual air permit issued pursuant to part
6 55 or federal law.

7 (ii) For noise levels, the 8-hour time-weighted average sound
8 pressure level in decibels measured at the common property line
9 nearest to the area of active mining on a sound level meter using
10 the A-weighting network shall not exceed the greater of the
11 following:

12 (A) 20 dB(A) above background levels.

13 (B) For residentially zoned adjacent property, 75 A-weighted
14 decibels; for commercially zoned adjacent property, 85 A-weighted
15 decibels; and for adjacent property in any other zoning
16 classification, including, but not limited to, industrial, 90 A-
17 weighted decibels.

18 (iii) For ground vibration, a displacement of 0.10 inches
19 measured anywhere outside of the property line resulting from the
20 operation of stationary machinery or equipment.

21 (n) A description of measures to be implemented to ensure that
22 blasting activity does not create any of the following at a
23 residential building:

24 (A) Ground vibration in excess of that set forth in United
25 States Bureau of Mines Reports, RI 8507, Figure B-1 "Safe levels of
26 blasting vibrations for houses using a combination of velocity and
27 displacement".

28 (B) Air blast in excess of 133 decibels.

29 (C) Unreasonable dust or noise.

1 (o) A description of all explosives that are intended to be
2 used, stored, or handled on-site. Explosives shall be used, stored,
3 and handled only in accordance with part 55 "Explosives and
4 Blasting Agents" of the department of licensing and regulatory
5 affairs' "General Industry Safety and Health Standards".

6 (p) A description of customer truck loading hours. Customer
7 truck loading is permitted from at least 6 a.m. to 7 p.m. local
8 time, Monday through Friday and from at least 6 a.m. to 5 p.m.,
9 local time, on Saturday, except to the extent additional hours are
10 specifically approved by the department or required by state or
11 county contract. These limitations only apply to the loading of
12 trucks or trailers for over-the-road transportation and do not
13 apply to the loading or unloading of railroad cars or ships.

14 (q) A description of proposed lighting at the mining area.

15 (r) A description of the proposed primary haul routes to and
16 from the mining area and a primary road, and the anticipated
17 impact, if any, on vehicle and pedestrian safety.

18 (s) A description of the processing activities proposed to be
19 conducted on-site, such as washing, screening, crushing, and
20 blending of sand, gravel, and other materials, including recycled
21 materials and other materials obtained from off-site, to create
22 sand and gravel products.

23 (t) A description of measures to be implemented to ensure that
24 blasting activity does not create any of the following at any
25 residential dwelling:

26 (i) Unreasonable dust or noise.

27 (ii) Air blast in excess of 133 decibels.

28 (u) A description of comprehensive general liability insurance
29 covering third party personal injury and property damage. The

1 operator shall maintain such insurance throughout the life of the
2 mine in amounts not less than \$1,000,000.00 per occurrence.

3 (2) All reclamation provisions required under this section
4 shall be carried to completion with reasonable diligence and may be
5 conducted concurrently with mining to the extent practicable,
6 taking into consideration the mining and reclamation plan, safety,
7 economics, availability of equipment and material, and other site-
8 specific conditions relevant and unique to the affected land and
9 the post-mining land use. Once initiated, final reclamation
10 measures shall be performed in compliance with the mining and
11 reclamation plan, unless the owner or operator resumes exploration
12 or mining. The owner or operator shall initiate reclamation within
13 the shorter of the following time periods:

14 (a) The period required by federal law.

15 (b) One year after cessation of mining operations or a longer
16 period if approved by the department.

17 Sec. 63906. (1) Subject to subsection (2), effective 14 days
18 after the department receives a mining permit application, the
19 application is considered to be administratively complete. When the
20 application is administratively complete, the department shall
21 notify the applicant in writing.

22 (2) If, before the expiration of the 14-day period under
23 subsection (1), the department notifies the applicant that the
24 application is not administratively complete, specifying the
25 information necessary to make the application administratively
26 complete, or notifies the applicant that the application fee has
27 not been paid, specifying the amount due, the running of the 14-day
28 period under subsection (1) is tolled until the applicant submits
29 to the department the specified information or fee amount due. The

1 notice shall be given in writing. A determination that an
2 application is administratively complete does not preclude the
3 department from requiring additional information from the
4 applicant. The time periods under this subsection (10) are tolled
5 until the applicant submits the requested information.

6 (3) Within 42 days after an administratively complete
7 application is received by the department, the department shall do
8 all of the following:

9 (a) Publish a public notice of the application in a newspaper
10 of general circulation in the area of the proposed mine.

11 (b) Transmit a copy of the public notice to the applicant and
12 to the supervisor or manager of the township or chief
13 administrative officer of the city or village where the mine is
14 proposed to be located.

15 (c) Post the public notice on the department's website and
16 make the notice available at the department's office in Lansing and
17 its district office for the district that includes the proposed
18 mining area. The department shall maintain the posting and continue
19 to make the notice available until the application is granted or
20 denied.

21 (4) The department shall transmit a copy of the notice under
22 subsection (3) to a person upon written request.

23 (5) The notice under subsection (3) shall contain all of the
24 following information:

25 (a) The date of publication of the public notice.

26 (b) The address and telephone number of the department office
27 in Lansing and the department district office of the district that
28 includes the location of the proposed mining area.

29 (c) The name and address of the applicant.

1 (d) A concise description of the applicant's proposed use.

2 (e) The location of the proposed mining area identified in the
3 application.

4 (f) A concise description of the department's procedures to
5 arrive at a decision to grant or deny the mining permit application
6 and information on the public comment period or other means by
7 which interested persons may comment on the application.

8 (g) The address and telephone number of the department office
9 where more information about or a copy of the application may be
10 obtained and where any other applicable related documents may be
11 inspected or copied.

12 (6) Not later than 30 days after the notice is published under
13 subsection (3), a person may submit comments on the application in
14 writing to the department. The department may extend the time for
15 public comment for not more than 30 days if the department
16 determines that an extension of time is necessary to facilitate
17 additional public comment.

18 (7) Comments submitted to the department in writing, during
19 the comment period under subsection (6) or other means of comment
20 referenced under subsection (5) (f), shall be retained and
21 considered by the department in making a final determination on the
22 application.

23 (8) If the department determines that 1 or more of the public
24 comments described in subsection (7) constitute sufficient cause or
25 that there is sufficient public interest in an application, the
26 department may conduct a public meeting on the application. The
27 department shall give notice of the public meeting not fewer than 5
28 or more than 28 days before the date of the public meeting. The
29 notice shall specify the time and place of the public meeting,

1 which shall be held in the county where the mining area is proposed
2 to be located, and shall include information on how to review a
3 copy of the application. The notice shall be given in writing to
4 the city, village, or township and the county where the mining area
5 is proposed to be located. The department shall accept written
6 public comment on the application for 15 days after the public
7 meeting.

8 (9) At the expiration of the public comment period under
9 subsection (8), or, if there is no public meeting under subsection
10 (8), the public comment period under subsection (6), the department
11 shall issue a report summarizing all comments received and
12 providing the department's response to the comments. The department
13 shall post the report on the department's website and make the
14 report available at the department's office in Lansing and its
15 district office for the district that includes the proposed the
16 mining area.

17 (10) Within 15 days after the expiration of the public comment
18 period under subsection (8), or, if there is no public meeting
19 under subsection (8), the public comment period under subsection
20 (6), and not more than 120 days after the date the department
21 determines that the mining permit application is administratively
22 complete, the department shall do 1 of the following:

23 (a) Grant the application and issue the mining permit. Subject
24 to subdivision (b), department shall grant the application if the
25 department determines that the application meets the requirements
26 of this part.

27 (b) Deny the application and notify the applicant in writing
28 of the reasons for the denial. The department shall deny the
29 application if the department determines, based on sound scientific

1 evidence, that the application does not meet the requirements of
2 this part. In addition, the department may deny the application if
3 the department determines that the operator or proposed operator is
4 in violation of this part, an order issued by the department under
5 this part, or a mining permit. However, the department shall not
6 deny the application because of such a violation if the person has
7 corrected the violation or has agreed in writing to correct the
8 violation pursuant to an administrative consent agreement
9 containing a compliance schedule approved by the department.

10 (11) Terms and conditions that are set forth in the mining
11 permit application and the mining and reclamation plan and that are
12 approved by the department are considered to be incorporated in the
13 mining permit.

14 (12) The issuance of a mining permit does not amend the
15 underlying zoning or the master plan, to the extent that the
16 underlying zoning or master plan complies with section 63903.

17 Sec. 63907. (1) A mining permit issued by the department is
18 valid for the life of the mine. However, the department may revoke
19 a mining permit if the operator does not commence construction of
20 plant facilities or mining covered by the mining permit within 10
21 years after the date the mining permit is issued.

22 (2) A mining permit may be transferred with approval of the
23 department, subject to this subsection and subsections (3) and (4).
24 The person seeking to acquire the mining permit shall submit a
25 request for transfer of the mining permit to the department on a
26 form and in a medium provided or approved by the department. The
27 person acquiring the mining permit shall accept the conditions of
28 that mining permit and adhere to the requirements of the approved
29 mining and reclamation plan.

1 (3) The department may deny a request to transfer a mining
2 permit if the department determines that the proposed transferee is
3 in violation of this part, an order issued by the department under
4 this part, or a mining permit. However, the department shall not
5 deny the request because of such a violation if the person has
6 corrected the violation or has agreed in writing to correct the
7 violation pursuant to an administrative consent agreement
8 containing a compliance schedule approved by the department.

9 (4) If the operator has been notified by the department of a
10 violation of this part or the mining permit at the mining area
11 involved in the transfer, the mining permit shall not be
12 transferred until the operator has corrected the violation or the
13 person acquiring the mining permit has entered into a written
14 agreement with the department to correct the violation.

15 (5) The operator may submit to the department a written
16 request to amend a mining permit. Upon receipt of the request, the
17 department shall determine if the requested amendment is a
18 significant change in the conditions of the mining permit. If the
19 department determines that the amendment is such a change, the
20 department may submit the request for amendment to the same review
21 process as provided in section 63906. If the department determines
22 that the requested amendment does not constitute a significant
23 change in the conditions of the mining permit, the department shall
24 approve the request and notify the operator in writing. If the
25 department denies the request, the department shall notify the
26 operator in writing of the reasons for the denial.

27 Sec. 63908. (1) For purposes of surveillance, monitoring,
28 administration, and enforcement of this part, the department shall
29 assess against an operator a mining surveillance fee on the sand

1 and gravel products sold during the calendar year.

2 (2) Funds collected by the assessment of the mining
3 surveillance fees shall not exceed the actual costs to the
4 department of implementing this part. Mining surveillance fees
5 collected under this section shall be forwarded to the state
6 treasurer for deposit in the sand and gravel surveillance fund
7 created in section 63921. The total amount of revenue to be raised
8 with the mining surveillance fees during a fiscal year shall be
9 determined by subtracting the amount of unexpended money in the
10 fund that is carried over to that fiscal year under section
11 63921(3) from the amount appropriated for that fiscal year for
12 surveillance, monitoring, administration, and enforcement under
13 this part. The department shall divide the total amount of revenue
14 to be raised with the mining surveillance fees by the number of
15 tons of sand and gravel sold in this state for the preceding
16 calendar year as reported by all operators under subsection (3).
17 The fee amount per ton shall be the lesser of this quotient and 5
18 cents per ton.

19 (3) An operator shall file a report of sand and gravel sales
20 by February 15 of each year. The report shall contain the number of
21 tons of sand and gravel products sold from each of the operator's
22 sand and gravel mines from January 1 through December 31 of the
23 immediately preceding year.

24 (4) The amount of the mining surveillance fee owed by an
25 operator is the product of the amount per ton determined under
26 subsection (2) and the total number of tons required to be reported
27 by that operator under subsection (3). Payment of the mining
28 surveillance fee is due not more than 30 days after the department
29 sends written notice to the operator of the amount due.

1 (5) The department may order an operator to suspend mining if
2 the operator does not submit an annual report in compliance with
3 subsection (3).

4 (6) An operator shall preserve for 2 years the records on
5 which the annual report of sales under subsection (3) is based. The
6 records are subject to audit by the department.

7 Sec. 63909. The department, if requested by an operator, may
8 modify or grant a variance from the provisions of this part if the
9 department determines that the modification or variance is not
10 contrary to the public interest. If the department determines that
11 the requested modification or variance has significant potential
12 impact to the environment or public safety, the department shall
13 provide for public notice and comments and a public meeting in the
14 same manner as provided in section 63906 for a mining permit
15 application.

16 Sec. 63910. (1) The department shall administer and enforce
17 this part.

18 (2) After giving reasonable notice to the operator or
19 landowner, the department may enter a mining area for an
20 investigation and inspection without incurring liability to the
21 operator or landowner.

22 Sec. 63911. By the first June 1 immediately after a mining
23 permit is issued, an operator shall file with the department a plan
24 map of the mining area. The map shall be drawn to a scale of 1 inch
25 equals 200 feet and be in the form specified by the department.
26 Annually thereafter, by June 1, the operator shall file a plan map
27 in the same scale and form showing any changes made during the
28 preceding calendar year and the portion of the mining area that the
29 operator anticipates will be subjected to active mining during the

1 current calendar year.

2 Sec. 63912. (1) An operator shall file with the department a
3 mining and reclamation report on or before June 1 of each year,
4 during the life of the mine. The mining and reclamation report
5 shall contain all of the following:

6 (a) A description of the status of mining and reclamation,
7 including revised drawings or photographs depicting the progress of
8 mining and reclamation, as applicable, for the preceding year.

9 (b) A list of the incident reports required under subsection
10 (2) for the preceding calendar year.

11 (c) A description of the annual financial assurance update
12 required under section 63913.

13 (2) An operator shall promptly report to the department any
14 incident or act of nature at a mining area or violation of a mining
15 permit that has created, or may create, a threat to the
16 environment, natural resources, or public health and safety.

17 (3) An operator shall preserve for 2 years records on which
18 the reports under subsection (1) or (2) are based and shall make
19 the records available to the department upon request.

20 Sec. 63913. (1) An operator shall maintain financial assurance
21 during mining until the department determines that all reclamation
22 has been completed, except that financial assurance shall be
23 released immediately upon termination of a mining permit under
24 section 63907(1). The financial assurance shall consist, at the
25 sole option of the operator, of a performance bond, surety, escrow,
26 cash, certificate of deposit, irrevocable letter of credit, or
27 other equivalent security, or any combination thereof. The
28 department may waive the requirement for financial assurance if the
29 operator submits a statement of financial responsibility

1 demonstrating to the satisfaction of the department that the
2 applicant has sufficient financial resources to satisfy the
3 reclamation requirements under this part.

4 (2) The financial assurance required under subsection (1)
5 shall be in the amount of \$3,000.00 per acre of area disturbed and
6 not yet reclaimed, excluding roadways, plant sites, and open water
7 areas that will remain open water after completion of reclamation.
8 If required by the department, the amount of financial assurance
9 shall be adjusted annually or the statement of financial
10 responsibility shall be updated annually to account for changes in
11 the number of acres as described in this subsection.

12 Sec. 63914. (1) An operator shall conduct reclamation
13 activities at a mining area in compliance with the approved mining
14 and reclamation plan.

15 (2) If mining is suspended for a continuous period exceeding 1
16 year, the operator shall maintain, monitor, and secure the mining
17 area.

18 (3) Subject to subsection (4), an operator shall begin final
19 reclamation of a mining area within 2 years after the date of
20 cessation of mining and shall complete reclamation within the time
21 set forth in the approved mining and reclamation plan.

22 (4) Upon written request of an operator, the department may
23 approve an extension of time to begin or complete final
24 reclamation.

25 Sec. 63915. (1) A person who is aggrieved by an order, action,
26 or inaction of the department under this part, by the issuance,
27 denial, termination, revocation, or amendment of a mining permit,
28 or by the operation of a mine may file a petition with the
29 department requesting a hearing. Subject to section 63917 and

1 63918, the filing of the petition is the aggrieved person's sole
2 recourse. The department may reject as untimely a petition filed
3 more than 90 days after an order, action, or inaction of the
4 department by which the petitioner is aggrieved.

5 (2) The department shall provide notice by mail of a hearing
6 under subsection (1) to all of the following:

7 (a) The person requesting the hearing.

8 (b) The operator or mining permit applicant.

9 (c) Other affected parties.

10 Sec. 63916. (1) If the department determines that an operator
11 has violated this part or a mining permit, the department shall
12 require the operator to correct the violation.

13 (2) If the department determines that a violation of this part
14 or a mining permit is resulting in an imminent and substantial
15 endangerment to the public health or safety, environment, or
16 natural resources, the department shall take action necessary to
17 abate or eliminate the endangerment. The action may include 1 or
18 more of the following:

19 (a) Revoking the mining permit.

20 (b) Issuing an order to the operator to immediately suspend
21 mining. For the purposes of enforcement under this subdivision,
22 imminent and substantial endangerment includes, but is not limited
23 to, failure to do either of the following:

24 (i) Submit an annual report as required by section 63908.

25 (ii) Maintain financial assurance under section 63913.

26 (c) Issuing an order to the operator to undertake such other
27 actions as may be necessary to abate or eliminate the endangerment.

28 (3) Before taking action under this section to suspend mining
29 or revoke a mining permit, or to otherwise prevent the continuation

1 of mining, the department shall give the operator written notice,
2 by certified mail, of the alleged violation and a reasonable period
3 of time to correct the alleged violation. The department shall
4 provide the operator an opportunity for a hearing.

5 (4) An order suspending mining activities under subsection
6 (2) (b) remains in effect until the endangerment to the public
7 health or safety, environment, or natural resources is eliminated,
8 but not more than 10 days. If the endangerment continues, the
9 supervisor of reclamation may, after providing an opportunity for a
10 hearing, extend the suspension beyond 10 days. The total duration
11 of the suspension of mining activities shall not be more than 30
12 days.

13 (5) If the operator or a surety under section 63913 fails or
14 neglects to correct a violation of this part or a mining permit or
15 take corrective actions as specified under an order of the
16 department, the department may, beginning 24 hours after giving
17 written notice to the operator and surety, enter the mining area
18 and any private or public property necessary to reach the mining
19 area, correct the violation, and remediate any damage to the public
20 health, environment, or natural resources resulting from the
21 violation. The operator and surety are jointly and severally liable
22 for expenses so incurred by the department. The operator or surety
23 shall pay the expenses within 30 days after being notified of the
24 amount. If the expenses are not paid within that time, the
25 department may bring an action against the operator or surety,
26 jointly or severally, for the recovery of the expenses. This part
27 does not limit the department's authority to take whatever response
28 activities it determines necessary to protect the public health,
29 safety, and welfare, the environment, or natural resources.

1 (6) The revocation of a mining permit or suspension of mining
2 under subsection (2) does not relieve an operator of the
3 responsibility to complete reclamation, maintain financial
4 assurance under section 63913, and undertake appropriate measures
5 to protect the environment, natural resources, and public health
6 and safety.

7 (7) If the department receives a complaint alleging a
8 violation of this part or a mining permit, the department shall
9 make a record of the complaint and the allegations included in the
10 complaint. If the person making the complaint provides written
11 evidence sufficient to support the allegations included in the
12 complaint, as determined by the department, the department shall
13 immediately notify the operator of the complaint and provide the
14 operator with a copy of the complaint, the record, and all written
15 evidence. The department shall give the operator an opportunity to
16 rebut the complaint and any supporting evidence. The department
17 shall take steps that it considers necessary to confirm the
18 evidence provided by the operator in rebuttal. If the department
19 determines that the complaint has been rebutted, it shall dismiss
20 the complaint and notify the complainant and operator of the
21 dismissal. If the complaint is not dismissed, the department shall
22 do all of the following:

23 (a) Conduct an inspection of the mining operation to
24 investigate the allegations not more than 5 business days after
25 receipt of the complaint. If the complaint or allegations are of a
26 highly serious nature, as determined by the department, the
27 department shall inspect the mining operation as quickly as
28 possible.

29 (b) Not more than 15 business days after completing an

1 investigation of the complaint, submit a written report of the
2 complaint and the results of the investigation to the operator and
3 the person who made the complaint. At a minimum, the written report
4 shall state whether the investigation identified a violation of
5 this part or a mining permit.

6 Sec. 63917. (1) The department may request the attorney
7 general to commence a civil action for appropriate relief,
8 including a permanent or temporary injunction, for a violation of
9 this part, a mining permit, or an order issued under this part.
10 Before requesting the attorney general to commence a civil action
11 or before the attorney general commences a civil action at the
12 attorney general's own initiative, the department must provide the
13 operator an opportunity for a hearing. The court has jurisdiction
14 to restrain the violation and to require compliance. In addition to
15 any other relief granted under this subsection, the court may
16 impose a civil fine of not more than \$1,000.00 per day of
17 violation.

18 (2) Upon a finding by the court that an operator violated this
19 part, a mining permit, or an order issued under this part and,
20 subject to subsection (6), that the violation poses or posed a
21 substantial endangerment to the public health, safety, or welfare,
22 the court may impose, in addition to the sanctions set forth in
23 subsection (1), a civil fine of not less than \$50,000.00 and not
24 more than \$1,000,000.00.

25 (3) The attorney general may file a civil action to recover,
26 in addition to a fine, the full value of the damages to the natural
27 resources of this state and the costs of surveillance and
28 enforcement incurred by this state as a result of the violation.

29 (4) A person who intentionally makes a false statement,

1 representation, or certification in an application for a mining
2 permit, a form pertaining to a mining permit, or a notice or report
3 required by a mining permit, knowing it to be false, is guilty of a
4 felony punishable by imprisonment for not more than 2 years or a
5 fine of not less than \$2,500.00 or more than \$25,000.00, or both,
6 for each violation. If the conviction is for a violation committed
7 after a first conviction of the person under this subsection, the
8 court shall impose a fine of not less than \$25,000.00 per day and
9 not more than \$50,000.00 per day of violation. Knowledge possessed
10 by a person other than the defendant under this subsection shall
11 not be attributed to the defendant unless the defendant took
12 substantial affirmative steps to shield himself or herself from the
13 relevant information.

14 (5) Subject to subsection (6), upon a finding by the court
15 that a violation described in subsection (4) poses or posed a
16 substantial endangerment to the public health, safety, or welfare,
17 the court may impose, in addition to the penalties set forth in
18 subsection (4), a sentence of imprisonment for not more than 1 year
19 or a fine of not more than \$500,000.00, or both.

20 (6) To find a defendant civilly or criminally liable for
21 substantial endangerment under subsection (2) or (5), the court
22 must determine that the defendant knowingly acted in such a manner
23 as to cause a danger of death or serious bodily injury and that the
24 defendant had an actual awareness, belief, or understanding that
25 his or her conduct would cause a substantial danger of death or
26 serious bodily injury.

27 (7) A civil fine or other civil recovery under this section is
28 payable to this state and shall be credited to the general fund.
29 The fine or other civil recovery constitutes a lien on any property

1 of any kind owned by the defendant.

2 (8) A lien under subsection (7) is effective and has priority
3 over all other liens and encumbrances, except those filed or
4 recorded before the date of judgment, but only if notice of the
5 lien is filed or recorded as required by state or federal law.

6 (9) A lien filed or recorded as described in subsection (8)
7 shall be terminated pursuant to the procedures required by state or
8 federal law within 14 days after the fine or other recovery ordered
9 to be paid is paid.

10 Sec. 63918. (1) A mine or mining is not a public or private
11 nuisance if both of the following apply:

12 (a) A mining permit has been issued for the mine or mining
13 under section 63906.

14 (b) The mine or mining is not determined in an action under
15 section 63917 to be in violation of this part.

16 (2) Subsection (1) applies notwithstanding any of the
17 following:

18 (a) A change in any of the following:

19 (i) The ownership of the mine.

20 (ii) The size of the mine.

21 (iii) The size of the community where the mine is located.

22 (b) Temporary cessation or interruption of mining.

23 (c) Enrollment in governmental programs.

24 (d) Adoption of new technology.

25 (e) A change in the type of sand and gravel product being
26 produced.

27 (f) A change in the land use or occupancy of land within 1
28 mile of the boundaries of the mine if, before that change in land
29 use or occupancy, the mine or mining would not have been a nuisance

1 with respect to the use and occupancy of the land.

2 Sec. 63919. In an action in which a mine or mining is alleged
3 to be a nuisance, if the defendant mine owner or operator prevails,
4 the mine owner or operator may recover from the plaintiff the
5 actual amount of costs and expenses determined by the court to have
6 been reasonably incurred by the mine owner or operator in
7 connection with the defense of the action, together with reasonable
8 and actual attorney fees.

9 Sec. 63920. The circuit court for Ingham County has exclusive
10 jurisdiction over all of the following:

11 (a) An appeal from the final decision or order made in a
12 proceeding instituted by an aggrieved person under section 63915.

13 (b) An action under section 63916(5), 63917(1) to (3), or
14 63919.

15 (c) Any other claim relating to the issuance of, or operation
16 under, a mining permit applied for or issued under this part.

17 (d) Proceedings under section 63917(4), except for arraignment
18 or the issuance of a criminal complaint or warrant.

19 Sec. 63921. (1) The sand and gravel surveillance fund is
20 created within the state treasury.

21 (2) The state treasurer shall deposit fees paid under this
22 part into the fund. The state treasurer may receive money or other
23 assets from any other source for deposit into the fund. The state
24 treasurer shall direct the investment of the fund. The state
25 treasurer shall credit to the fund interest and earnings from fund
26 investments.

27 (3) Unexpended money in the fund at the close of the fiscal
28 year shall remain in the fund and be carried over to the succeeding
29 fiscal year.

1 (4) The department shall be the administrator of the fund for
2 auditing purposes.

3 (5) The department shall expend money from the fund, upon
4 appropriation, only for the actual cost of surveillance,
5 monitoring, administration, and enforcement under this part.