

**SUBSTITUTE FOR
SENATE BILL NO. 429**

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



1 the following:

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

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

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

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

25 (4) As used in this section, "mining" does not include the
26 removal of clay, gravel, sand, peat, or topsoil **unless authorized**
27 **by a permit under part 639.**

28 **PART 639. SAND AND GRAVEL MINING**

29 **Sec. 63901. As used in this part:**



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

4 (b) "Contested case hearing" means a hearing under chapter 4
5 of the administrative procedures act of 1969, 1969 PA 306, MCL
6 24.271 to 24.288.

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

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

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

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

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

18 (f) "In existence" or "existing" describes active or
19 previously active mining areas that have not yet been fully
20 reclaimed.

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

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

25 (i) "Mining" means sand and gravel mining and processing,
26 including associated loading of trucks and transporting sand and
27 gravel by truck.

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



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

4 (ii) Land where material from that mining is stored on the
5 surface.

6 (iii) Land on which processing plants and auxiliary facilities
7 are located.

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

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

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

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

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

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

21 (o) "Sand and gravel" means sand or gravel, or both, that is
22 excavated from natural deposits on or in the earth for commercial,
23 industrial, or construction purposes. However, sand and gravel does
24 not include clay; limestone or limestone products; sand mined for
25 commercial or industrial purposes from sand dune areas regulated
26 under part 637; or earth materials associated with extraction of
27 coal regulated under part 635, nonferrous metallic minerals
28 regulated under part 632, or ferrous minerals regulated under part
29 631.



1 (p) "Sand and gravel products" means those products produced
2 from the processing of sand and gravel and other materials,
3 including recycled materials and other materials obtained from off-
4 site.

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

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

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

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

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

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

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

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

25 (a) It has received a local permit for mining, zoning
26 approval, or other governmental authorization.

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



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

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

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

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

24 (a) An application fee of \$5,000.00. The department shall
25 forward the application fee to the state treasurer for deposit in
26 the sand and gravel surveillance fund created in section 63921.

27 (b) An environmental impact assessment for the proposed mining
28 that describes the natural and human-made features, including
29 flora, fauna, hydrology, geology, and baseline conditions in the



1 proposed mining area, and the potential impacts on those features
2 from the proposed mining.

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

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

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

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

10 (b) Plans for reclamation of the mining area following
11 cessation of mining.

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

13 (d) The proposed sequence of mining, including proposed
14 phasing, if applicable.

15 (e) Surface overburden removal plans.

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

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

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

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



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

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

8 (ii) Equipment used for screening and crushing shall be located
9 as follows:

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

11 (B) Not less than 300 feet from the nearest adjoining property
12 line.

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

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

19 (iv) The operator shall maintain on the boundaries of the
20 mining area outward facing signage, spaced no greater than every
21 200 feet, specifying "No Trespassing - Mining Area".

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

26 (vi) An active mining area shall be screened from view from
27 adjoining properties to the extent reasonably practicable. The
28 screening shall be accomplished by using overburden, to the extent
29 available, to construct berms of up to 6 feet in height along



1 adjoining property boundaries, unless the applicant requests and
2 the department approves a different method of screening. The
3 department may require berms visible to the public to be landscaped
4 with grass or trees to the extent reasonably practicable.

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

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

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

17 (l) A description of measures to be implemented to ensure both
18 of the following:

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

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

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

29 (i) For dust control, the standards required pursuant to any



1 applicable general or individual air permit issued pursuant to part
2 55 or federal law.

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

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

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

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

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

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

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

25 (C) Unreasonable dust or noise.

26 (o) A description of all explosives that are intended to be
27 used, stored, or handled on-site. Explosives shall be used, stored,
28 and handled only in accordance with part 55 "Explosives and
29 Blasting Agents" of the department of licensing and regulatory



1 affairs' "General Industry Safety and Health Standards".

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

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

11 (r) A description of the proposed primary haul routes to and
12 from the mining area and a primary road, and the anticipated
13 impact, if any, of the operator's use of the haul routes on vehicle
14 and pedestrian safety and on the condition of the haul routes. If a
15 mining operation requires the use of a road other than a class A
16 road, the department may request that the operator collaborate with
17 the county road commission to determine a route from the mining
18 area to a class A road. The route shall be reasonably direct to
19 accommodate customary mining operations, including trucking
20 operations.

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

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

29 (i) Unreasonable dust or noise.



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

2 (u) A description of comprehensive general liability insurance
3 covering third party personal injury and property damage. The
4 operator shall maintain such insurance throughout the life of the
5 mine in amounts not less than \$1,000,000.00 per occurrence.

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

17 (a) The period required by federal law.

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

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

25 (2) If, before the expiration of the 14-day period under
26 subsection (1), the department notifies the applicant that the
27 application is not administratively complete, specifying the
28 information necessary to make the application administratively
29 complete, or notifies the applicant that the application fee has



1 not been paid, specifying the amount due, the running of the 14-day
2 period under subsection (1) is tolled until the applicant submits
3 to the department the specified information or fee amount due. The
4 notice shall be given in writing. A determination that an
5 application is administratively complete does not preclude the
6 department from requiring additional information from the
7 applicant. The time periods under this subsection (10) are tolled
8 until the applicant submits the requested information.

9 (3) Within 42 days after an administratively complete
10 application is received by the department, the department shall do
11 all of the following:

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

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

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

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

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

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

29 (b) The address and telephone number of the department office



1 in Lansing and the department district office of the district that
2 includes the location of the proposed mining area.

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

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

5 (e) The location of the proposed mining area identified in the
6 application.

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

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

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

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

26 (8) If the department determines that 1 or more of the public
27 comments described in subsection (7) constitute sufficient cause or
28 that there is sufficient public interest in an application, the
29 department may conduct a public hearing on the application in the



1 county where the mining area is proposed to be located. The
 2 department shall give notice of the public hearing not fewer than 5
 3 or more than 28 days before the date of the public hearing. The
 4 notice shall specify the time and place of the public hearing and
 5 shall include information on how to review a copy of the
 6 application. The notice shall be given in writing to the city,
 7 village, or township and the county where the mining area is
 8 proposed to be located. The department shall accept written public
 9 comment on the application for 15 days after the public hearing.

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

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

25 (a) Subject to subdivision (b), grant the application and
 26 issue the mining permit if the department determines that all of
 27 the following apply:

28 (i) The application meets the requirements of this part.

29 (ii) The conditions under which mining will occur as provided



1 for in the application will reasonably minimize actual or potential
2 adverse impacts on air, water, or other natural resources.

3 (iii) The reclamation set forth in the mining and reclamation
4 plan is consistent with or can be made consistent with the master
5 plan of the township, city, or village where the mine is proposed
6 to be located. In granting the application, the department shall
7 modify the proposed reclamation set forth in the mining and
8 reclamation plan as the department determines is necessary to make
9 the reclamation consistent with the master plan.

10 (b) Deny the application and notify the applicant in writing
11 of the reasons for the denial. The department shall deny the
12 application if the requirements of subdivision (a) are not met. In
13 addition, the department may deny the application if the department
14 determines that the operator or proposed operator is in violation
15 of this part, an order issued by the department under this part, or
16 a mining permit. However, the department shall not deny the
17 application because of such a violation if the person has corrected
18 the violation or has agreed in writing to correct the violation
19 pursuant to an administrative consent agreement containing a
20 compliance schedule approved by the department.

21 (11) Terms and conditions that are set forth in the mining
22 permit application and the mining and reclamation plan and that are
23 approved by the department are considered to be incorporated in the
24 mining permit.

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

28 Sec. 63907. (1) A mining permit issued by the department is
29 valid for the life of the mine. However, the department may revoke



1 a mining permit if the operator does not commence construction of
2 plant facilities or mining covered by the mining permit within 10
3 years after the date the mining permit is issued.

4 (2) A mining permit may be transferred with approval of the
5 department, subject to this subsection and subsections (3) and (4).
6 The person seeking to acquire the mining permit shall submit a
7 request for transfer of the mining permit to the department on a
8 form and in a medium provided or approved by the department. The
9 person acquiring the mining permit shall accept the conditions of
10 that mining permit and adhere to the requirements of the approved
11 mining and reclamation plan.

12 (3) The department may deny a request to transfer a mining
13 permit if the department determines that the proposed transferee is
14 in violation of this part, an order issued by the department under
15 this part, or a mining permit. However, the department shall not
16 deny the request because of such a violation if the person has
17 corrected the violation or has agreed in writing to correct the
18 violation pursuant to an administrative consent agreement
19 containing a compliance schedule approved by the department.

20 (4) If the operator has been notified by the department of a
21 violation of this part or the mining permit at the mining area
22 involved in the transfer, the mining permit shall not be
23 transferred until the operator has corrected the violation or the
24 person acquiring the mining permit has entered into a written
25 agreement with the department to correct the violation.

26 (5) The operator may submit to the department a written
27 request to amend a mining permit. Upon receipt of the request, the
28 department shall determine if the requested amendment is a
29 significant change in the conditions of the mining permit. If the



1 department determines that the amendment is such a change, the
 2 department may submit the request for amendment to the same review
 3 process as provided in section 63906. If the department determines
 4 that the requested amendment does not constitute a significant
 5 change in the conditions of the mining permit, the department shall
 6 approve the request and notify the operator in writing. If the
 7 department denies the request, the department shall notify the
 8 operator in writing of the reasons for the denial.

9 (6) The local unit of government may submit to the department
 10 a written request to amend a mining permit application during the
 11 application process or to amend the mining permit after the permit
 12 is granted. Upon receipt of the request, the department shall
 13 determine if the requested amendment is a significant change in the
 14 conditions of the application or mining permit. If the department
 15 determines that the amendment is a significant change, the
 16 department may submit the request for amendment to the same review
 17 process as provided in section 63906 or if the amendment is made
 18 during the application process as provided in subsection (5). If
 19 the department determines that the requested amendment is not a
 20 significant change, the department shall grant or deny the request.
 21 If the department denies the request, the department shall notify
 22 the local unit of government in writing of the reasons for the
 23 denial. If the department grants the request, the department shall
 24 modify the mining permit application or issue an amended mining
 25 permit.

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



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

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

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

29 (5) The department may order an operator to suspend mining if



1 the operator does not submit an annual report in compliance with
2 subsection (3).

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

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

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

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

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



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

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

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

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

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

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

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



1 applicant has sufficient financial resources, apart from the
2 proposed mining activity, to satisfy the reclamation requirements
3 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 The state treasurer shall adjust the \$3,000.00 figure by an amount
9 determined by the state treasurer at the end of each calendar year,
10 beginning the first full calendar year after the amendatory act
11 that added this section took effect, to reflect the cumulative
12 percentage change in the Consumer Price Index since the end of the
13 calendar year in which the amendatory act that added this section
14 took effect. The department of treasury shall publish the adjusted
15 figure on its website. An adjusted figure applies only to mining
16 permits for which an application is submitted on or after the date
17 of publication of the adjusted figure and before the date of
18 publication of the next adjusted figure.

19 (3) The operator shall annually update the amount of financial
20 assurance or statement of financial responsibility maintained or
21 submitted by the operator under subsection (1) to account for any
22 change in the number of acres as described in subsection (2).

23 (4) As used in this section, "Consumer Price Index" means the
24 most recent comprehensive index of consumer prices available for
25 this state from the Bureau of Labor Statistics of the United States
26 Department of Labor.

27 Sec. 63914. (1) An operator shall conduct reclamation
28 activities at a mining area in compliance with the approved mining
29 and reclamation plan.



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

4 (3) Subject to subsection (4), an operator shall begin final
5 reclamation of a mining area within 1 year after the date of
6 cessation of mining and shall complete reclamation within the time
7 set forth in the approved mining and reclamation plan.

8 (4) Upon written request of an operator, the department may
9 approve an extension of time to begin or complete final
10 reclamation.

11 Sec. 63915. (1) A person who is aggrieved by an order, action,
12 or inaction of the department under this part, by the issuance,
13 denial, termination, revocation, or amendment of a mining permit,
14 or by the operation of a mine may file a petition with the
15 department requesting a contested case hearing. Subject to section
16 63917 and 63918, the filing of the petition is the aggrieved
17 person's sole recourse. The department may reject as untimely a
18 petition filed more than 90 days after an order, action, or
19 inaction of the department by which the petitioner is aggrieved.

20 (2) The department shall provide notice by mail of a contested
21 case hearing under subsection (1) to all of the following:

- 22 (a) The person requesting the contested case hearing.
23 (b) The operator or mining permit applicant.
24 (c) Other affected parties.

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

28 (2) If the department determines that a violation of this part
29 or a mining permit is resulting in an imminent and substantial



1 endangerment to the public health or safety, environment, or
2 natural resources, the department shall take action necessary to
3 abate or eliminate the endangerment. The action may include 1 or
4 more of the following:

5 (a) Revoking the mining permit.

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

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

11 (ii) Maintain financial assurance under section 63913.

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

14 (3) Before taking action under this section to suspend mining
15 or revoke a mining permit, or to otherwise prevent the continuation
16 of mining, the department shall give the operator written notice,
17 by certified mail, of the alleged violation and a reasonable period
18 of time to correct the alleged violation. The department shall
19 provide the operator an opportunity for a hearing.

20 (4) An order suspending mining activities under subsection

21 (2)(b) remains in effect until the endangerment to the public
22 health or safety, environment, or natural resources is eliminated,
23 but not more than 10 days. If the endangerment continues, the
24 supervisor of reclamation may, after providing an opportunity for a
25 hearing, extend the suspension beyond 10 days. The total duration
26 of the suspension of mining activities shall not be more than 30
27 days.

28 (5) If the operator or a surety under section 63913 fails or
29 neglects to correct a violation of this part or a mining permit or



1 take corrective actions as specified under an order of the
2 department, the department may, beginning 24 hours after giving
3 written notice to the operator and surety, enter the mining area
4 and any private or public property necessary to reach the mining
5 area, correct the violation, and remediate any damage to the public
6 health, environment, or natural resources resulting from the
7 violation. The operator and surety are jointly and severally liable
8 for expenses so incurred by the department. The operator or surety
9 shall pay the expenses within 30 days after being notified of the
10 amount. If the expenses are not paid within that time, the
11 department may bring an action against the operator or surety,
12 jointly or severally, for the recovery of the expenses. This part
13 does not limit the department's authority to take whatever response
14 activities it determines necessary to protect the public health,
15 safety, and welfare, the environment, or natural resources.

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

22 (7) If the department receives a complaint alleging a
23 violation of this part or a mining permit, the department shall
24 make a record of the complaint and the allegations included in the
25 complaint. If the person making the complaint provides written
26 evidence sufficient to support the allegations included in the
27 complaint, as determined by the department, the department shall
28 immediately notify the operator of the complaint and provide the
29 operator with a copy of the complaint, the record, and all written



1 evidence. The department shall give the operator an opportunity to
2 rebut the complaint and any supporting evidence. The department
3 shall take steps that it considers necessary to confirm the
4 evidence provided by the operator in rebuttal. If the department
5 determines that the complaint has been rebutted, it shall dismiss
6 the complaint and notify the complainant and operator of the
7 dismissal. If the complaint is not dismissed, the department shall
8 do all of the following:

9 (a) Conduct an inspection of the mining operation to
10 investigate the allegations not more than 5 business days after
11 receipt of the complaint. If the complaint or allegations are of a
12 highly serious nature, as determined by the department, the
13 department shall inspect the mining operation as quickly as
14 possible.

15 (b) Not more than 15 business days after completing an
16 investigation of the complaint, submit a written report of the
17 complaint and the results of the investigation to the operator and
18 the person who made the complaint. At a minimum, the written report
19 shall state whether the investigation identified a violation of
20 this part or a mining permit.

21 (8) If the department dismisses a complaint and the department
22 previously dismissed a complaint by the same complainant with
23 respect to the same operator and mining operation, the complainant
24 is liable to the department for the full costs incurred by the
25 department to investigate the subsequent complaint.

26 Sec. 63917. (1) The department may request the attorney
27 general to commence a civil action for appropriate relief,
28 including a permanent or temporary injunction, for a violation of
29 this part, a mining permit, or an order issued under this part.



1 Before requesting the attorney general to commence a civil action
2 or before the attorney general commences a civil action at the
3 attorney general's own initiative, the department must provide the
4 operator an opportunity for a hearing. The court has jurisdiction
5 to restrain the violation and to require compliance. In addition to
6 any other relief granted under this subsection, the court may
7 impose a civil fine of not more than \$1,000.00 per day of
8 violation.

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

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

20 (4) A person who intentionally makes a false statement,
21 representation, or certification in an application for a mining
22 permit, a form pertaining to a mining permit, or a notice or report
23 required by a mining permit, knowing it to be false, is guilty of a
24 felony punishable by imprisonment for not more than 2 years or a
25 fine of not less than \$2,500.00 or more than \$25,000.00, or both,
26 for each violation. If the conviction is for a violation committed
27 after a first conviction of the person under this subsection, the
28 court shall impose a fine of not less than \$25,000.00 per day and
29 not more than \$50,000.00 per day of violation. Knowledge possessed



1 by a person other than the defendant under this subsection shall
2 not be attributed to the defendant unless the defendant took
3 substantial affirmative steps to shield himself or herself from the
4 relevant information.

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

11 (6) To find a defendant civilly or criminally liable for
12 substantial endangerment under subsection (2) or (5), the court
13 must determine that the defendant knowingly acted in such a manner
14 as to cause a danger of death or serious bodily injury and that the
15 defendant had an actual awareness, belief, or understanding that
16 his or her conduct would cause a substantial danger of death or
17 serious bodily injury.

18 (7) A civil fine or other civil recovery under this section is
19 payable to this state and shall be credited to the general fund.
20 The fine or other civil recovery constitutes a lien on any property
21 of any kind owned by the defendant.

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

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



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

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

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

7 (2) Subsection (1) applies notwithstanding any of the
8 following:

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

10 (i) The ownership of the mine.

11 (ii) The size of the mine.

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

13 (b) Temporary cessation or interruption of mining.

14 (c) Enrollment in governmental programs.

15 (d) Adoption of new technology.

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

18 (f) A change in the land use or occupancy of land within 1
19 mile of the boundaries of the mine if, before that change in land
20 use or occupancy, the mine or mining would not have been a nuisance
21 with respect to the use and occupancy of the land.

22 Sec. 63919. In an action in which a mine or mining is alleged
23 to be a nuisance, if the defendant mine owner or operator prevails,
24 the mine owner or operator may recover from the plaintiff the
25 actual amount of costs and expenses determined by the court to have
26 been reasonably incurred by the mine owner or operator in
27 connection with the defense of the action, together with reasonable
28 and actual attorney fees.

29 Sec. 63920. The circuit court for Ingham County has exclusive



1 jurisdiction over all of the following:

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

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

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

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

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

12 (2) The state treasurer shall deposit fees paid under this
13 part into the fund. The state treasurer may receive money or other
14 assets from any other source for deposit into the fund. The state
15 treasurer shall direct the investment of the fund. The state
16 treasurer shall credit to the fund interest and earnings from fund
17 investments.

18 (3) Unexpended money in the fund at the close of the fiscal
19 year shall remain in the fund and be carried over to the succeeding
20 fiscal year.

21 (4) The department shall be the administrator of the fund for
22 auditing purposes.

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

26 Sec. 63922. An operator is liable to a city, a village, or the
27 county road commission for damage caused by the operator's trucks
28 to a city street, village street, or county road, respectively,
29 that is a haul route between the mining operation and a primary



1 road.

