

HOUSE BILL No. 4087

January 29, 2003, Introduced by Reps. Moolenaar, Hummel, Bisbee, LaJoy, Pumford, Emmons, Nitz, Howell, Julian, Ward, Pastor, Caswell, Brandenburg and Palsrok and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 317.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 317 GROUNDWATER CONFLICTS

2 Sec. 31701. As used in this part:

3 (a) "Agricultural well" means a high capacity well that is
4 used for an agricultural purpose.

5 (b) "Complaint" means a complaint submitted under section
6 31702 alleging a potential groundwater conflict.

7 (c) "Construction" means the process of building a building,
8 highway, utility, or another structure, including all of the
9 following:

10 (i) Assembling materials.

11 (ii) Disassembling and removing a structure.

1 (iii) Preparing the construction site.

2 (iv) Work related to any of the items described in
3 subparagraphs (i) to (iii).

4 (d) "Contested case hearing" means a contested case hearing
5 under the administrative procedures act of 1969, 1969 PA 306, MCL
6 24.201 to 24.328.

7 (e) "Dewatering well" means a temporary water well that is
8 used as part of a construction project to remove water from a
9 surface or subsurface area and ceases to be used upon completion
10 of the construction project or shortly after completion of the
11 construction project.

12 (f) "Director" means the director of the department of
13 environmental quality or his or her designee.

14 (g) "Groundwater conflict" means a groundwater conflict
15 declared by order of the director under section 31703.

16 (h) "High capacity well" means 1 or more water wells of a
17 person at the same location that, in the aggregate from all
18 sources and by all methods, have the capability of withdrawing
19 100,000 or more gallons of groundwater in 1 day.

20 (i) "Owner" means all of the following:

21 (i) The owner of an interest in property.

22 (ii) A person in possession of property.

23 (iii) For a temporary dewatering well, the person who
24 authorized the construction that necessitated the installation of
25 the dewatering well.

26 (j) "Potable water" means water that at the point of use is
27 acceptable for human consumption.

1 (k) "Small quantity well" means 1 or more water wells of a
2 person at the same location that, in the aggregate from all
3 sources and by all methods, have the capability of withdrawing
4 less than 100,000 gallons of groundwater in 1 day.

5 (l) "Water well" means an excavation, however constructed,
6 that is used for the purpose of withdrawing groundwater. Water
7 well does not include a drain as defined in section 3 of the
8 drain code of 1956, 1956 PA 40, MCL 280.3.

9 Sec. 31702. (1) The owner of a small quantity well may
10 submit a complaint alleging a potential groundwater conflict if
11 the small quantity well has failed to furnish the well's normal
12 supply of water or the well has failed to furnish potable water
13 and the owner believes the well's problems have been caused by a
14 high capacity well. A complaint under this subsection shall be
15 submitted by calling the toll-free telephone number provided in
16 subsection (4) or by submitting a complaint in writing to the
17 director or to the department of agriculture as provided for in
18 subsection (2). The director shall conduct an on-site
19 investigation within 48 hours after receipt of a complaint. The
20 director shall give affected persons an opportunity to contribute
21 to the investigation of a complaint.

22 (2) If a generally accepted agricultural and management
23 practice for groundwater withdrawals is established under the
24 Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474,
25 that includes a process for investigating a potential groundwater
26 conflict between an agricultural well and a small quantity well,
27 including a requirement for the department of agriculture to

1 conduct an on-site investigation within 48 hours of receiving a
2 complaint, the director of the department of agriculture shall
3 receive complaints and investigate those complaints as provided
4 for in the generally accepted agricultural and management
5 practice.

6 (3) After conducting an on-site investigation, the director
7 or the department of agriculture, as appropriate, shall make a
8 diligent effort to resolve the complaint. In attempting to
9 resolve a complaint, the director or the department of
10 agriculture, as appropriate, may propose a remedy that the
11 director or the department believes would equitably resolve the
12 complaint. If, within a reasonable amount of time following an
13 on-site investigation, the department of agriculture is unable to
14 resolve a complaint, the department of agriculture shall refer
15 the matter, and provide all relevant information, to the
16 director.

17 (4) The director shall provide for the use of a toll-free
18 telephone number to receive complaints. The director shall
19 maintain a log of complaints received from calls to this number.

20 (5) The director and the director of the department of
21 agriculture shall do both of the following:

22 (a) Publicize the toll-free telephone number for receipt of
23 complaints as provided for in subsection (4).

24 (b) Enter into a memorandum of understanding that describes
25 the process that will be followed by each director when a
26 complaint involves an agricultural well.

27 Sec. 31703. (1) The director shall, by order, declare a

1 groundwater conflict if an investigation of a complaint discloses
2 all of the following and within a reasonable amount of time the
3 director is unable to resolve the complaint:

4 (a) That the small quantity well has failed to furnish the
5 well's normal supply of water or, based upon reasonable evidence
6 of prior potability supplied by the owner, failed to furnish
7 potable water.

8 (b) That the small quantity well and the well's equipment
9 were functioning properly at the time of the failure.

10 (c) That the failure of the small quantity well was caused by
11 the lowering of the groundwater level in the area.

12 (d) That the lowering of the groundwater level exceeds normal
13 seasonal water level fluctuations and substantially impairs
14 continued use of the groundwater resource in the area.

15 (e) That the lowering of the groundwater level was caused by
16 at least 1 high capacity well.

17 (f) That the owner of the small quantity well did not
18 unreasonably reject a remedy proposed by the director or the
19 director of the department of agriculture under section
20 31702(3).

21 (2) In addition to the authority under subsection (1) to
22 declare a groundwater conflict, if the director has clear and
23 convincing scientifically-based evidence that indicates that
24 continued groundwater withdrawals from a high capacity well will
25 exceed the recharge capability of the groundwater resource of the
26 area, the director shall declare a groundwater conflict.

27 Sec. 31704. (1) An order declaring a groundwater conflict

1 shall include a notice of contested case hearing to be held as
2 soon as practicable after the declaration of the groundwater
3 conflict. Subject to subsection (2), following the contested
4 case hearing, the director may continue, amend, or terminate the
5 order.

6 (2) An order declaring a groundwater conflict shall remain in
7 effect for 90 days unless either of the following occurs:

8 (a) The order is terminated by the director. The director
9 shall terminate an order when justified by changed conditions.

10 (b) The order is extended by the director during the pendency
11 of a proceeding under section 31706.

12 (3) An order declaring a groundwater conflict is effective
13 when a copy of the order is served upon the owner of a high
14 capacity well that is reasonably believed to have caused the
15 failure of the complainant's small quantity well.

16 (4) If a groundwater conflict requires action before service
17 can be completed under subsection (3), oral notification in
18 person by the director is sufficient until service can be
19 completed. Oral notification is effective for not more than 96
20 hours.

21 (5) As soon as possible after an order declaring a
22 groundwater conflict has been issued, the director shall provide
23 copies of the order to the local units of government in which the
24 high capacity well and the small quantity well are located and to
25 the newspapers of general circulation located in the county or
26 counties in which the high capacity well and the small quantity
27 well are located.

1 Sec. 31705. (1) Upon declaration of a groundwater conflict,
2 the director shall, by order, require the immediate temporary
3 provision at the point of use of an adequate supply of potable
4 water.

5 (2) Except as provided in subsections (3) and (4), if the
6 director issues an order declaring a groundwater conflict, the
7 director may, by order, restrict the quantity of groundwater that
8 may be extracted from a high capacity well under either of the
9 following conditions:

10 (a) If the high capacity well is reasonably believed to have
11 caused the failure of the complainant's small quantity well and
12 an immediate temporary provision of an adequate supply of potable
13 water has not been provided.

14 (b) There is a reasonable belief that continued groundwater
15 withdrawals from the high capacity well will exceed the recharge
16 capability of the groundwater resource of the area.

17 (3) In issuing an order under subsection (2), the director
18 shall consider the impact the order will have on the viability of
19 a business associated with the high capacity well or other use of
20 the high capacity well.

21 (4) If an operator of a high capacity well withdraws water by
22 a means other than pumping, the director may, by order,
23 temporarily restrict the quantity of groundwater that may be
24 extracted only if the conditions of subsection (2)(a) or (b) have
25 not been met.

26 Sec. 31706. (1) If a groundwater conflict has been
27 declared, the owner of a high capacity well shall, subject to an

1 order of the director, provide timely and reasonable compensation
2 as provided in section 31707 to persons who own small quantity
3 wells if there is a failure or substantial impairment of those
4 small quantity wells and the following conditions exist:

5 (a) The failure or substantial impairment was caused by the
6 groundwater withdrawals of the high capacity well.

7 (b) If the small quantity well was constructed on or after
8 April 21, 1994, the well was constructed in compliance with part
9 127 of the public health code, 1978 PA 368, MCL 333.12701 to
10 333.12771.

11 (2) In addition to the timely and reasonable compensation
12 required under subsection (1), if a groundwater conflict has been
13 declared, the owner of a high capacity well shall reimburse the
14 director an amount equal to the actual and reasonable costs
15 incurred by the director in investigating and resolving the
16 groundwater conflict. Money received by the director under this
17 subsection shall be forwarded to the state treasurer for deposit
18 into the water use protection fund created in section 32714.

19 Sec. 31707. (1) Timely and reasonable compensation under
20 section 31706 consists of and is limited to the reimbursement of
21 expenses reasonably incurred by the complainant beginning 30 days
22 prior to the date on which a complaint is made under section
23 31702 in doing the following:

24 (a) Obtaining an immediate temporary provision at the prior
25 point of use of an adequate supply of potable water.

26 (b) Obtaining 1 of the following:

27 (i) The restoration of the affected small quantity well to

1 the well's former relative capability.

2 (ii) The permanent provision at the point of use of an
3 alternative potable supply of equal quantity.

4 (iii) The permanent restriction or scheduling of the
5 groundwater withdrawals of the high capacity well so that the
6 affected small quantity well continues to produce either of the
7 following:

8 (A) The well's normal supply of water.

9 (B) The normal supply of potable water if the well normally
10 furnishes potable water.

11 (2) The refusal of an owner of an affected small quantity
12 well to accept timely and reasonable compensation described in
13 subsection (1) is sufficient grounds for the director to
14 terminate an order imposed on a responsible high capacity well.
15 An owner may request a contested case hearing if the owner does
16 not believe compensation was timely or reasonable.

17 Sec. 31708. The owner of a high capacity well subject to an
18 order under this part may demand a contested case hearing to
19 challenge the terms of the order.

20 Sec. 31709. The director may promulgate rules to implement
21 this part.

22 Sec. 31710. (1) A person who violates an order issued under
23 this part is responsible for a civil fine of not more than
24 \$1,000.00 for each day of violation, but not exceeding a total of
25 \$50,000.00.

26 (2) A default in the payment of a civil fine or costs ordered
27 under this section or an installment of the fine or costs may be

1 remedied by any means authorized under the revised judicature act
2 of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

3 (3) All civil fines recovered under this section shall be
4 forwarded to the state treasurer for deposit into the water use
5 protection fund created in section 32714.

6 (4) The director may bring an action in a court of competent
7 jurisdiction to enforce an order under this part, including
8 injunctive or other equitable relief.

9 Enacting section 1. This amendatory act does not take
10 effect unless Senate Bill No. _____ or House Bill No. 4097
11 (request no. 00899'03) of the 92nd Legislature is enacted into
12 law.