

## **Nestlé Permit Issuance: Background and Information**

Nestlé Waters North America, Inc. (Nestlé) submitted an application to the Michigan Department of Environmental Quality (MDEQ) in July 2016, seeking approval under Section 17 of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399), to increase water production from an existing well, PW-101, located near Ewart, known as “White Pine Springs,” for the purpose of bottling it. The company proposed to increase its withdrawal to a continuous pumping rate of 400 gallons per minute (gpm).

In 2001, Nestlé registered baseline capacity of the White Pine Springs at 150 gpm. In April 2015, Nestlé was authorized for a 100 gpm increase (to 250 gpm) through the Water Withdrawal Assessment Tool (WWAT). The WWAT is a conservative screening model that is used to predict stream flow, stream flow depletions from pumping groundwater wells, and the potential effects of stream flow depletions on fish populations.

Nestlé soon followed with another request for an additional increase of 150 gpm, which would allow Nestlé to increase the pumping capacity from the current 250 gpm to 400 gpm. This request was reviewed by the MDEQ via a site-specific review in December 2015. The site-specific review was necessary because the increased 150 gpm water withdrawal did not pass the initial WWAT screening. The site-specific review examines additional available information to more accurately determine the likelihood that the proposed withdrawal will cause an adverse resource impact. After reviewing the information provided by Nestlé and additional information collected by MDEQ personnel, the MDEQ authorized the increase under Part 327 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), based upon the site-specific review on January 5, 2016. Even though the withdrawal was authorized, Nestlé could not increase the pumping to 400 gpm for the purpose of bottling the water unless also authorized by an MDEQ permit under Section 17.

The proposed increase to 400 gpm (576,000 gallons per day [gpd]) triggered the requirement for a source review under Section 17 of Act 399. Section 17, in effect since 2008, requires an application to be submitted and a permit to be obtained from the MDEQ for a new or increased large quantity withdrawal of more than 200,000 gpd that is intended for the purposes of producing bottled water. As part of the permit application process, the MDEQ evaluates the environmental, hydrological, and hydrogeological conditions that exist and the predicted effects of the intended withdrawal. This permit application is the first one received for this purpose since this legislation was enacted.

In order to more thoroughly evaluate the hydrological conditions, the MDEQ requested additional information from Nestlé on February 14, 2017. The MDEQ received the requested information from Nestlé on March 17, 2017.

In September of 2017, Nestlé requested and received an extension until November 3, 2017, to submit additional information requested by the MDEQ.

In 2017, two government-to-government consultations between Michigan’s tribal nations and the MDEQ were held, along with one technical review session with representatives of the tribes and technical staff of the MDEQ.

On February 22, 2018, a second consultation was held with the technical representatives of the tribes and the technical staff of the MDEQ to answer any questions the tribes' technical representatives had about the additional information submitted near the end of 2017.

On March 16, 2018, a third government-to-government consultation between Michigan tribal nations and the MDEQ was held to discuss this application and answer questions from the tribal council. The tribal council was told that a permit decision was expected to be made in the following weeks.

On March 30, 2018, after extensive review of all submitted materials, internal evaluations, and considerable internal and external consultation, staff of the MDEQ, the Michigan Department of Natural Resources, and the Department of Attorney General concluded that the proposed activity, with conditions, satisfies the requirements of Section 17 and all referenced statutes and recommended to the Director of the MDEQ that the permit be issued.

The permit was issued on April 2, 2018. Nestlé now has to prepare a monitoring plan consistent with the requirements of the permit and submit it to the MDEQ for consideration and approval. Once the monitoring plan is in place and baseline data is collected, Nestlé is authorized to begin withdrawing water at a rate up to 400 gpm from the White Pine Springs well, PW-101.

The public comment period for this application opened on September 19, 2016, and ended on April 21, 2017, running for a total of 214 days. During this time, the MDEQ received more than 80,000 comments, along with 340,000 signatures via petition, and most expressed general concerns about water withdrawals, impacts on other waters of the state, and bottled water operations. The MDEQ reviews all comments, however, the number of comments received is not one of the factors considered in permit decisions. For the permit application process, comments providing a legal or scientific justification for denying, altering, or approving the permit are considered based on the regulatory decision framework outlined in Section 17.

In regards to fees, Nestlé is required, and has paid, the \$5,000 application fee under Section 17. In addition, an annual reporting fee of \$200 per withdrawal site/facility is required under Part 327, Great Lakes Preservation, of the NREPA, 1994 PA 451, as amended. In this specific case, because the withdrawal is an increase over an existing withdrawal, Nestlé has already been paying the annual fee for the site and will be required to continue to pay it as long as the withdrawal is active.

Note: PW-101 does not currently have the infrastructure to pump at 400 gpm. In order to equip the well with the necessary larger pump and other appurtenances, Act 399 requires a construction permit. The Central Michigan District Health Department is the issuing agency for such construction permits. The MDEQ is assisting with the technical review of the plans and specifications. The construction permit is contingent upon the Section 17 permit being issued by the MDEQ and has not yet been issued by the local health department.