

Act No. 177

Public Acts of 2003

Approved by the Governor

August 28, 2003

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August 29, 2003

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STATE OF MICHIGAN

92ND LEGISLATURE

REGULAR SESSION OF 2003

Introduced by Reps. Moolenaar, Hummel, Bisbee, LaJoy, Pumford, Emmons, Nitz, Howell, Julian, Ward, Pastor, Caswell, Brandenburg, Palsrok, Stewart, Rocca, Shulman, DeRossett, Kooiman, Voorhees, Ehardt, Meyer, Newell, Vander Veen, Williams, Caul, Ruth Johnson, Shackleton, Gaffney, Acciavatti, DeRoche, Taub, Amos, Stakoe, Garfield, Milosch, Hoogendyk, Nofs, Steil, Stahl, Sheen, Huizenga, Farhat and Walker

## ENROLLED HOUSE BILL No. 4087

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding part 317.

The People of the State of Michigan enact:

### PART 317 AQUIFER PROTECTION AND DISPUTE RESOLUTION

Sec. 31701. As used in this part:

- (a) "Agricultural well" means a high capacity well that is used for an agricultural purpose.
- (b) "Complaint" means a complaint submitted under section 31702 alleging a potential groundwater dispute.
- (c) "Construction" means the process of building a building, road, utility, or another structure, including all of the following:
  - (i) Assembling materials.
  - (ii) Disassembling and removing a structure.

(iii) Preparing the construction site.

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

(d) "Dewatering well" means a well or pump that is used for a limited time period as part of a construction project to remove or pump water from a surface or subsurface area and ceases to be used upon completion of the construction project or shortly after completion of the construction project.

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

(f) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(g) "Fund" means the aquifer protection revolving fund created in section 31710.

(h) "Groundwater" means the water in the zone of saturation that fills all of the pore spaces of the subsurface geologic material.

(i) "Groundwater dispute" means a groundwater dispute declared by order of the director under section 31703.

(j) "High capacity well" means 1 or more water wells associated with an industrial or processing facility, an irrigation facility, a farm, or a public water supply system that, in the aggregate from all sources and by all methods, have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(k) "Industrial or processing facility" means that term as it is defined in section 32701.

(l) "Irrigation facility" means that term as it is defined in section 32701.

(m) "Local health department" means that term as it is defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(n) "Owner" means either of the following:

(i) The owner of an interest in property.

(ii) A person in possession of property.

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

(p) "Public water supply system" means a water system that provides water for human consumption or other purposes to persons other than the supplier of water.

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

(r) "Water well" means an opening in the surface of the earth, however constructed, that is used for the purpose of withdrawing groundwater. Water well does not include a drain as defined in section 3 of the drain code of 1956, 1956 PA 40, MCL 280.3.

(s) "Well drilling contractor" means a well drilling contractor registered under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

Sec. 31702. (1) Subject to section 31712, the owner of a small quantity well may submit a complaint alleging a potential

groundwater dispute if the small quantity well has failed to furnish the well's normal supply of water or the well has failed to furnish potable water and the owner has credible reason to believe the well's problems have been caused by a high capacity well. A complaint shall be submitted to the director or to the director of the department of agriculture if the complaint involves an agricultural well. The complaint shall be in writing and shall be submitted in person, via certified mail, via the toll-free facsimile telephone number provided in subsection (4), or via other means of electronic submittal as developed by the department. However, the director or the director of the department of agriculture may refuse to accept an unreasonable complaint. The complaint shall include all of the following information:

- (a) The name, address, and telephone number of the owner of the small quantity well.
  - (b) The location of the small quantity well, including the county, township, township section, and address of the property on which the small quantity well is situated, and all other available information that defines the location of that well.
  - (c) An explanation of why the small quantity well owner believes that a high capacity well has interfered with the proper function of the small quantity well and any information available to the small quantity well owner about the location and operation of the high capacity well.
  - (d) The date or dates that the small quantity well owner alleges that the interference by a high capacity well occurred.
  - (e) Sufficient evidence to establish a reasonable belief that the interference was caused by a high capacity well.
- (2) The owner of a small quantity well may call the toll-free telephone line provided for in subsection (5) to request a complaint form or other information regarding the dispute resolution process provided in this part.
- (3) Within 2 working days after receipt of a complaint under subsection (1), the director or the director of the department of agriculture, as appropriate, shall contact the complainant and begin an investigation. Within 5 working days after receipt of a complaint under subsection (1), the director or the director of the department of agriculture, as appropriate, shall conduct an on-site evaluation. However, if the complaint is for a small quantity well that is in close proximity to other small quantity wells for which documented complaints have been received and investigated during the previous 60 days, the department need not conduct an on-site evaluation unless the department determines an on-site evaluation is necessary. If the director or the director of the department of agriculture, as appropriate, considers it necessary for an investigation under this subsection, he or she may request that the owner of the small quantity well provide a written assessment by a well drilling contractor that the small quantity well failure was not the result of well failure or equipment failure. The assessment shall include a determination of the static water level in the well at the time of the assessment and, if readily available, the type of pump and equipment. The director or the director of the department of agriculture, as appropriate, shall give affected persons an opportunity to contribute to the investigation of a complaint. In conducting the investigation, the director or the director of the department of agriculture, as appropriate, shall consider whether the owner of the high capacity well is using industry-recognized water conservation management practices.
- (4) After conducting an investigation, the director or the director of the department of agriculture, as appropriate, shall make a diligent effort to resolve the complaint. In attempting to resolve a complaint, the director or the director of the department of agriculture, as appropriate, may propose a remedy that he or she believes would equitably resolve the complaint. If, within 14 days following the submittal of a complaint, the director of the department of agriculture is unable to resolve a complaint, the director of the department of agriculture shall refer the complaint, and provide all relevant information, to the director.
- (5) The director shall provide for the use of a toll-free facsimile telephone line to receive complaints and a toll-free telephone line for owners of small quantity wells to request complaint forms and to obtain other information regarding the dispute resolution process provided in this part.
- (6) The director and the director of the department of agriculture shall do both of the following:
- (a) Publicize the toll-free facsimile line and the toll-free telephone line provided for in subsection (5).
  - (b) Enter into a memorandum of understanding that describes the process that will be followed by each director when a complaint involves an agricultural well.

(7) A complainant who submits more than 2 unverified complaints under this section within 1 year may be ordered by the director to pay for the full costs of investigation of any third or subsequent unverified complaint. As used in this subsection, "unverified complaint" means a complaint in response to which the director determines that there is not reasonable evidence to declare a groundwater dispute.

Sec. 31703. (1) The director shall, by order, declare a groundwater dispute if an investigation of a complaint discloses all of the following, based upon reasonable scientifically-based evidence, and within a reasonable amount of time the director is unable to resolve the complaint:

- (a) That the small quantity well has failed to furnish the well's normal supply of water or failed to furnish potable water.
- (b) That the small quantity well and the well's equipment were functioning properly at the time of the failure. The determination under this subdivision shall be made based upon an assessment from a well drilling contractor that is provided by the owner of the small quantity well.
- (c) That the failure of the small quantity well was caused by the lowering of the groundwater level in the area.
- (d) That the lowering of the groundwater level exceeds normal seasonal water level fluctuations and substantially impairs continued use of the groundwater resource in the area.
- (e) That the lowering of the groundwater level was caused by at least 1 high capacity well.
- (f) That the owner of the small quantity well did not unreasonably reject a remedy proposed by the director or the director of the department of agriculture under section 31702(3).

(2) In addition to the authority under subsection (1) to declare a groundwater dispute, if the director has clear and convincing scientifically-based evidence that indicates that continued groundwater withdrawals from a high capacity well will exceed the recharge capability of the groundwater resource of the area, the director, by order, may declare a groundwater dispute.

(3) The director may amend or terminate an order declaring a groundwater dispute at any time.

Sec. 31704. (1) An order declaring a groundwater dispute is effective when a copy of the order is served upon the owner of a high capacity well that is reasonably believed to have caused the failure of the complainant's small quantity well.

(2) If a groundwater dispute requires action before service can be completed under subsection (1), oral notification in person by the director is sufficient until service can be completed. Oral notification is effective for not more than 96 hours.

(3) As soon as possible after an order declaring a groundwater dispute has been issued, the director shall provide copies of the order to the local units of government in which the high capacity well and the small quantity well are located and to the local health departments with jurisdiction over those wells.

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

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

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

(b) If there is clear and convincing scientifically-based evidence that continued groundwater withdrawals from the high capacity well will exceed the recharge capability of the groundwater resource of the area.

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

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

(5) The director shall not issue an order that diminishes the normal supply of drinking water or the capability for fire suppression of a public water supply system owned or operated by a local unit of government.

Sec. 31706. (1) If a groundwater dispute has been declared, the owner of a high capacity well shall, subject to an order of the director, provide timely and reasonable compensation as provided in section 31707 if there is a failure or substantial impairment of a small quantity well and the following conditions exist:

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

(b) The small quantity well was constructed prior to February 14, 1967 or, if the small quantity well was constructed on or after February 14, 1967, the well was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(2) In addition to the timely and reasonable compensation required under subsection (1), if a groundwater dispute has been declared, the owner of a high capacity well shall reimburse the director an amount equal to the actual and reasonable costs incurred by the director in investigating and resolving the groundwater dispute, not to exceed \$75,000.00. Money received by the director under this subsection shall be forwarded to the state treasurer for deposit into the fund.

Sec. 31707. (1) Timely and reasonable compensation under section 31706 consists of and is limited to either or both of the following:

(a) The reimbursement of expenses reasonably incurred by the complainant beginning 30 days prior to the date on which a complaint is made under section 31702 in doing the following:

(i) Paying for the cost of conducting a well assessment to determine that the small quantity well and the well's equipment were functioning properly at the time of the failure.

(ii) Paying for the cost of obtaining an immediate temporary provision at the prior point of use of an adequate supply of potable water.

(iii) Obtaining 1 of the following:

(A) The restoration of the affected small quantity well to the well's normal supply of water.

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

(b) If an adequate remedy is not achievable under subdivision (a), the restriction or scheduling of the groundwater withdrawals of the high capacity well so that the affected small quantity well continues to produce either of the following:

(i) The well's normal supply of water.

(ii) The normal supply of potable water if the well normally furnishes potable water.

(2) The refusal of an owner of an affected small quantity well to accept timely and reasonable compensation described in subsection (1) is sufficient grounds for the director to terminate an order imposed on the owner of a high capacity well.

Sec. 31708. The owner of a high capacity well subject to an order under this part may appeal that order directly to circuit court pursuant to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

Sec. 31709. This part does not apply to a potential groundwater dispute involving any of the following:

- (a) A high capacity well owned or operated by a local unit of government if the local unit of government agrees to make the aggrieved property owner whole by connecting the owner's property to the local unit of government's public water supply system or by drilling the owner a new well, with the installation costs paid by the local unit of government.
- (b) A high capacity well associated with a public water supply system that is owned or operated by a local unit of government if the recharge area of the water well is protected by a wellhead protection program approved by the department under the state's wellhead protection program.
- (c) A high capacity well that is a dewatering well.
- (d) A high capacity well that is used solely for the purpose of fire suppression.

Sec. 31710. (1) The aquifer protection revolving fund is created in the state treasury.

(2) The fund may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the fund shall be expended by the department only to implement this part.

(5) If money in the fund is used to conduct hydrogeological studies or other studies to gather data on the nature of aquifers or groundwater resources in the state, the department shall include this information in the groundwater inventory and map prepared under section 32802.

Sec. 31711. Not later than April 1, 2004, and every 2 years thereafter, the department shall prepare and submit to the standing committees of the senate and the house of representatives a report that includes both of the following:

- (a) An analysis of the department's costs of implementing this part and whether the limitation on reimbursable costs under section 31706(2) should be modified.
- (b) Recommendations on modifications to this part that would improve the overall effectiveness of this part.

Sec. 31712. (1) Within 30 days after the effective date of the amendatory act that added this section, the director shall identify 2 geographic areas in the state that are at greatest risk for potential groundwater disputes.

(2) Beginning 30 days after the effective date of the amendatory act that added this section, this part shall be administered in the 2 geographic areas identified by the director under subsection (1).

(3) Beginning July 1, 2004, this part shall be administered on a statewide basis.

Sec. 31713. (1) A person who violates an order issued under this part is responsible for a civil fine of not more than \$1,000.00 for each day of violation, but not exceeding a total of \$50,000.00.

- (2) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.
- (3) All civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the general fund.
- (4) The director may bring an action in a court of competent jurisdiction to enforce an order under this part, including injunctive or other equitable relief.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor