

Natural resources; sand dunes; sand dune mining and regulations;
modify.

NATURAL RESOURCES: Sand dunes; ENVIRONMENTAL PROTECTION: Other

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 63701, 63704, 63708, 63711, and 63712
(MCL 324.63701, 324.63704, 324.63708, 324.63711, and 324.63712),
as added by 1995 PA 57, and by adding sections 63712a and
63712b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 63701. As used in this part:

2 (a) "Active cell-unit" means a cell-unit set forth in the
3 approved progressive cell-unit mining and reclamation plan pro-
4 vided for in section 63706(1), in which vegetation and topsoil
5 have been removed in preparation for sand dune mining or sand
6 removal has been initiated after the date of issuance of the sand
7 dune mining permit. Vegetation removal does not preclude the
8 removal of marketable forest products from a cell-unit, if the

1 removal maintains the ground cover and topsoil within the
2 cell-unit in stable condition.

3 (b) "Administratively complete" means an application for a
4 sand dune mining permit that is determined by the department to
5 satisfy all of the conditions of this part and rules promulgated
6 under this part.

7 (c) "Barrier dune" means the first landward sand dune forma-
8 tion along the shoreline of a Great Lake or a sand dune formation
9 designated by the department.

10 (d) "Beneficiation" means to process sand for any of the
11 following purposes, but does not include ANY OF THE FOLLOWING IN
12 the drying process:

13 (i) Regulating the grain size of the desired product.

14 (ii) Removing unwanted constituents.

15 (iii) Improving the quality and purity of the desired
16 product.

17 (e) "Cell-unit" means a subunit of the total sand dune
18 mining project as determined in size and location by the
19 operator. A cell-unit shall not exceed 10 acres in size for sand
20 dune mining operations that ~~commence~~ BEGIN operation after
21 March 31, 1977 or for the expansion of sand dune mining opera-
22 tions that existed before March 31, 1977. A cell-unit shall not
23 exceed 30 acres in size for operations that existed before
24 March 31, 1977.

25 (f) "Conformance bond" means a surety bond that is executed
26 by a surety company authorized to do business in this state,
27 cash, certificates of deposit, letters of credit, or other

1 securities that are filed by an operator to ensure compliance
2 with this part, rules promulgated under this part, or conditions
3 of a sand dune mining permit.

4 (G) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
5 QUALITY.

6 (H) ~~(g)~~ "Environmental elements" means the biological,
7 physical, and chemical characteristics of the environment,
8 including but not limited to ALL OF the following:

9 (i) Watersheds.

10 (ii) Water bodies.

11 (iii) Forests.

12 (iv) Existing areas maintained for public recreation.

13 (v) Shorelands.

14 (vi) Habitat areas.

15 (I) ~~(h)~~ "Great Lakes" means any of the Great Lakes that
16 have a shoreline within this state.

17 (J) ~~(i)~~ "Interim cell-unit status" means a cell-unit as
18 set forth in an approved progressive cell-unit mining and recla-
19 mation plan provided for in section 63706(1), in which all sand
20 dune mining and reclamation within the cell-unit has been com-
21 pleted, but the vegetation has not sustained itself through 1
22 full growing season. A cell-unit placed in interim cell-unit
23 status is required to retain the conformance bond provided in
24 section 63712 until reclassification by the department as pro-
25 vided in section 63712(5). Each sand dune mining activity shall
26 be limited to no more than 3 cell-units in interim cell-unit
27 status at any 1 time.

1 (K) ~~(j)~~ "Operator" means an owner or lessee of mineral
2 rights or any other person engaged in or preparing to engage in
3 sand dune mining activities with respect to mineral rights within
4 a sand dune area.

5 (l) ~~(k)~~ "Sand dune area" means that area designated by the
6 department that includes those geomorphic features composed pri-
7 marily of sand, whether windblown or of other origin and that
8 lies within 2 miles of the ordinary high-water mark on a Great
9 Lake as defined in section 32502, and includes critical dune
10 areas as defined in part 353.

11 (M) ~~(l)~~ "Sand dune mining" means the removal of sand from
12 sand dune areas for commercial or industrial purposes, or both.
13 The removal of sand from sand dune areas in volumes of less than
14 3,000 tons is not sand dune mining if the removal is a 1-time
15 occurrence and the reason the sand is removed is not for the
16 direct use for an industrial or commercial purpose. However, the
17 removal of any volume of sand that is not sand dune mining within
18 a critical dune area as defined in part 353 is subject to the
19 critical dune protection provisions of part 353. The department
20 may authorize in writing the removal of more than 3,000 tons of
21 sand without a sand dune mining permit issued pursuant to section
22 63704 for a purpose related to protecting an occupied dwelling or
23 other structure from property damage related to the migration of
24 sand or the instability of sand. This removal may be for more
25 than 1 occurrence, but a written authorization from the depart-
26 ment is required for each removal.

1 (N) ~~(m)~~ "Water table" means the surface in an unconfined
2 aquifer at which the pressure is atmospheric. The water table is
3 found at the level at which water stands in wells that penetrate
4 the aquifer.

5 Sec. 63704. (1) ~~After July 1, 1977, a~~ A person or opera-
6 tor shall not engage in sand dune mining within Great Lakes sand
7 dune areas without first obtaining a permit for that purpose from
8 the department.

9 (2) Prior to receiving a permit from the department, a
10 person or operator shall submit all of the following:

11 (a) A permit application on a form provided by the
12 department.

13 (B) A PERMIT APPLICATION FEE OF \$300.00.

14 (C) ~~(b)~~ An environmental impact statement of the proposed
15 mining activity as prescribed by section 63705.

16 (D) ~~(c)~~ A progressive cell-unit mining and reclamation
17 plan for the proposed mining activity as prescribed by
18 section 63706.

19 (E) ~~(d)~~ A 15-year mining plan as prescribed by section
20 63707.

21 (3) PERMIT APPLICATION FEES COLLECTED UNDER THIS SECTION
22 SHALL BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT INTO THE
23 SAND DUNE MINING ADMINISTRATION FUND CREATED IN SECTION 63712A.

24 Sec. 63708. (1) ~~A~~ SUBJECT TO SUBSECTION (6), A sand dune
25 mining permit issued by the department is valid for not more than
26 5 years. A sand dune mining permit shall be renewed if the sand
27 dune mining activities have been carried out in compliance with

1 this part, the rules promulgated under this part, and the
2 conditions of the sand dune mining permit issued by the
3 department.

4 (2) The sand dune mining permit shall state any conditions,
5 limitations, or other restrictions determined by the department,
6 including any setback from the ordinary high-water mark of a
7 Great Lake for the protection of the barrier dune.

8 (3) In granting a sand dune mining permit, if the department
9 allows for the removal of all or a portion of the barrier dune
10 pursuant to this part, it shall submit to the commission written
11 reasons for permitting the removal.

12 (4) The department shall approve or deny a sand dune mining
13 permit application in writing within 120 days after the applica-
14 tion is received and is determined by the department to be admin-
15 istratively complete. If a sand dune mining permit is denied,
16 the reasons shall be stated in a written report.

17 (5) The department shall provide a list of all pending sand
18 dune mining applications upon a request from a person. The list
19 shall give the name and address of each applicant, the legal
20 description of the lands included in the project, and a summary
21 statement of the purpose of the application.

22 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, A
23 PERSON SHALL NOT ENGAGE IN SAND DUNE MINING AFTER JANUARY 1,
24 2012.

25 Sec. 63711. (1) ~~For purposes of surveillance, monitoring,~~
26 ~~administration, and enforcement of this part, an~~ EACH operator
27 is assessed a fee of not more than ~~10~~ 20 cents per ton of sand

1 mined from a sand dune area for the calendar year reported as
2 described in subsection (2). ~~Funds collected by the assessment~~
3 ~~of the fee shall not exceed the actual costs to the department of~~
4 ~~implementing the sections of this part that pertain to sand dune~~
5 ~~mining. Any fees collected under this subsection that are unex-~~
6 ~~pected at the end of a fiscal year shall be credited to a sepa-~~
7 ~~rate fund of the department, carried over to the succeeding~~
8 ~~fiscal year, and deducted from the amount appropriated for that~~
9 ~~year for surveillance, monitoring, administration, and enforce-~~
10 ~~ment of this part for purposes of computing the fee to be~~
11 ~~assessed for that year.~~ MONEY COLLECTED UNDER THIS SUBDIVISION

12 SHALL BE FORWARDED TO THE STATE TREASURER FOR DEPOSIT AS

13 FOLLOWS:

14 (A) SEVENTY-FIVE PERCENT OF THE MONEY COLLECTED INTO THE
15 SAND DUNE MINING ADMINISTRATION FUND CREATED IN SECTION 63712A.

16 (B) TWENTY-FIVE PERCENT OF THE MONEY COLLECTED INTO THE SAND
17 DUNE CONSERVATION FUND CREATED IN SECTION 63712B.

18 (2) ~~An~~ EACH operator shall file an annual report on or
19 before January 31 of each year. The report shall show the areas
20 mined and describe the progress of restoration and reclamation
21 activities of the operator for the preceding calendar year. The
22 report shall contain both of the following:

23 (a) The number of tons of sand mined from a sand dune area.

24 (b) ~~Location~~ THE LOCATION of the sand dune area.

25 (3) The fee described in subsection (1) ~~shall be~~ IS due
26 not more than 30 days after the department sends written notice
27 to the operator of the amount due.

1 (4) The ~~surveillance~~ fee PROVIDED FOR IN SUBSECTION (1)
2 and annual report required by this section is confidential and
3 shall not be available for public inspection without the written
4 consent of the person filing the fee and report, except in
5 accordance with judicial order.

6 (5) Failure to submit an annual report in compliance with
7 rules promulgated by the department constitutes grounds for revo-
8 cation of a permit.

9 (6) A penalty equal to 10% of the amount due, or \$1,000.00,
10 whichever is greater, shall be assessed against the operator for
11 a fee that is not paid when due. An unpaid fee and penalty shall
12 constitute a debt and become the basis of a judgment against the
13 operator. ~~Penalties paid pursuant to this section shall be used~~
14 ~~for the implementation, administration, and enforcement of this~~
15 ~~part.~~ A PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE FOR-
16 WARDED TO THE STATE TREASURER FOR DEPOSIT INTO THE SAND DUNE
17 MINING ADMINISTRATION FUND CREATED IN SECTION 63712A.

18 (7) Records upon which the annual report REQUIRED UNDER
19 SUBSECTION (2) is based shall be preserved for 3 years and are
20 subject to audit by the department.

21 (8) The department shall annually prepare and submit to the
22 house of representatives and senate standing committees with
23 jurisdiction over subject areas related to natural resources and
24 the environment a report on the sand mining surveillance activi-
25 ties undertaken by the department for the immediately preceding
26 year and the cost of those activities.

1 Sec. 63712. (1) ~~Prior~~ FOLLOWING THE ISSUANCE OF A PERMIT
2 UNDER THIS PART, BUT PRIOR to the initiation of a disturbance of
3 land, the holder of a sand dune mining permit shall file with the
4 department a conformance bond in favor of the state.

5 (2) The conformance bonds REQUIRED UNDER THIS PART shall be
6 filed for a maximum of 3 active cell-units and 3 cell-units in
7 interim cell-unit status within the sand dune mining permit and
8 shall be for an amount equal to ~~\$10,000.00 per cell-unit or~~
9 ~~\$1,000.00 per each acre in the cell-units, whichever is greater,~~
10 ~~for cell-units bonded prior to June 23, 1994. For all cell-units~~
11 ~~that are bonded after June 23, 1994, the conformance bond shall~~
12 ~~be for an amount equal to \$20,000.00- \$40,000.00 per cell-unit or~~
13 ~~\$2,000.00- \$4,000.00 per each acre in the cell-units, whichever~~
14 ~~is greater. The bond for a cell-unit bonded prior to June 23,~~
15 ~~1994 shall remain in effect until the cell-unit is released from~~
16 ~~the requirements of the conformance bond as provided in subsec-~~
17 ~~tion (4) or the cell-unit boundary is revised as approved by the~~
18 ~~department. If an existing cell-unit boundary is revised, the~~
19 ~~conformance bond for the cell-unit shall be increased to the~~
20 ~~amounts provided for cell-units bonded after June 23, 1994.~~

21 (3) The conformance bonds REQUIRED UNDER THIS PART shall be
22 transferable to other cell-units contained within the sand dune
23 mining permit upon faithful conformance with the approved recla-
24 mation plan as provided in section 63706.

25 (4) The conformance bond REQUIRED UNDER THIS PART shall be
26 conditioned upon the faithful performance of the requirements set
27 forth in the approved reclamation plan as provided in section

1 63706. Liability under the conformance bond shall be maintained
2 as long as the reclamation is not completed in compliance with
3 the approved plan. The conformance bond shall remain in full
4 force until the release of the cell-unit from the conformance
5 bond requirements, including the period of time the cell-unit may
6 have been placed in interim cell-unit status.

7 (5) The department shall not reclassify a cell-unit from
8 active to interim cell-unit status until the following minimum
9 conditions or requirements have been met:

10 (a) All permitted sand dune mining activities within the
11 cell-unit have been completed.

12 (b) All extraction or processing equipment has been removed
13 from the cell-unit, except that a roadway, conveyor, or slurry
14 pipeline corridor may be maintained through a cell-unit and the
15 cell-unit still may be reclassified to interim cell-unit status.
16 This roadway, conveyor, or slurry pipeline corridor shall be con-
17 sidered part of the plant site and shall be removed and revege-
18 tated as provided by section 63706(1)(e).

19 (c) All upland areas within the cell-unit that were dis-
20 turbed by sand dune mining have been regraded as provided in sec-
21 tion 63706(3)(a).

22 (d) All submerged grades within the cell-unit established by
23 sand dune mining have been regraded as provided in section
24 63706(3)(b).

25 (e) All upland areas within the cell-unit that were dis-
26 turbed by sand dune mining have been revegetated utilizing native
27 or indigenous species or other plant material pursuant to the

1 approved progressive cell-unit mining and reclamation plan as
2 provided in section 63706(1). The vegetation that has been
3 planted shall have germinated or taken root and cover a minimum
4 of 80% of the upland areas disturbed by sand dune mining, and no
5 single area exposed to the elements shall be greater than 25
6 square feet.

7 (f) The operator shall provide proper measures to aid in the
8 establishment of growth of the planted vegetation until adequate
9 root systems have developed to provide sustained growth.

10 (6) The department may reclassify an active cell-unit to
11 interim cell-unit status upon receipt of a written request by the
12 operator. The department shall conduct an on-site inspection of
13 the reclamation activities that have been completed and determine
14 if the completed reclamation activities are adequate to reclas-
15 sify the active cell-unit to interim cell-unit status. The
16 department shall schedule the on-site inspection within 45 days
17 of the written request. The department shall notify the operator
18 within 30 days following the date of the inspection of the
19 department's decision to grant or deny the request for interim
20 cell-unit status. If the department determines the reclamation
21 activities conducted within the cell-unit do not meet the condi-
22 tions and requirements for interim cell-unit status, the notifi-
23 cation shall include information detailing the reasons for
24 denial.

25 (7) If the department determines the status of an active
26 cell-unit does not meet the conditions or requirements for
27 reclassification to interim cell-unit status, the operator may

1 not reapply for reclassification of the same active cell-unit
2 until 1 year from the previous request.

3 (8) Notification shall be given to the operator upon comple-
4 tion or acceptance by the department of the reclamation
5 activity. The notification constitutes the release of the
6 cell-unit from the conformance bond requirements if:

7 (a) All permitted sand dune mining activities within the
8 cell-unit have been completed.

9 (b) All extraction or processing equipment has been removed
10 from the cell-unit, except a roadway, conveyor, or slurry pipe-
11 line corridor may be maintained through a cell-unit and the
12 cell-unit still released from bond. This roadway, conveyor, or
13 slurry pipeline corridor shall be considered part of the plant
14 site and shall be removed and revegetated as provided by section
15 63706(1)(e).

16 (c) All upland areas within the cell-unit that were dis-
17 turbed by sand dune mining have been regraded as provided in sec-
18 tion 63706(3)(a).

19 (d) All submerged grades within the cell-unit established by
20 sand dune mining have been regraded as provided in section
21 63706(3)(b).

22 (e) All upland areas within the cell-unit that were dis-
23 turbed by sand dune mining have been revegetated utilizing native
24 or indigenous species or other plant material pursuant to the
25 approved reclamation plan as provided in section 63706(1).

1 (f) There are no areas within the revegetated portions of
2 the cell-unit where a 10-foot by 10-foot test plot can be
3 measured with less than 80% survival of the planted vegetation.

4 (g) The plant material shall be required to sustain itself
5 through 1 full growing season.

6 (h) There are no areas within the revegetated portion of the
7 cell-unit with ongoing erosion, except some wind erosion shall be
8 allowed if the wind erosion that is occurring does not threaten
9 the stability of the regraded slopes or the ability of the plant
10 material to accommodate the accretion of sand.

11 (9) Mining or extraction of sand dune minerals from any
12 other cell-unit contained within the sand dune mining permit is
13 prohibited until compliance or approval is attained from the
14 department.

15 (10) A violation of this section constitutes grounds for
16 revocation of the sand dune mining permit.

17 SEC. 63712A. (1) THE SAND DUNE MINING ADMINISTRATION FUND
18 IS CREATED WITHIN THE STATE TREASURY.

19 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
20 FROM ANY SOURCE FOR DEPOSIT INTO THE SAND DUNE MINING ADMINISTRA-
21 TION FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF
22 THE SAND DUNE MINING ADMINISTRATION FUND. THE STATE TREASURER
23 SHALL CREDIT TO THE SAND DUNE MINING ADMINISTRATION FUND INTEREST
24 AND EARNINGS FROM FUND INVESTMENTS.

25 (3) MONEY IN THE SAND DUNE MINING ADMINISTRATION FUND AT THE
26 CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT
27 LAPSE TO THE GENERAL FUND.

1 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE SAND DUNE
2 MINING ADMINISTRATION FUND, UPON APPROPRIATION, ONLY FOR THE SUR-
3 VEILLANCE, MONITORING, ADMINISTRATION, AND ENFORCEMENT OF THIS
4 PART.

5 SEC. 63712B. (1) THE SAND DUNE CONSERVATION FUND IS CREATED
6 WITHIN THE STATE TREASURY.

7 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
8 FROM ANY SOURCE FOR DEPOSIT INTO THE SAND DUNE CONSERVATION
9 FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
10 SAND DUNE CONSERVATION FUND. THE STATE TREASURER SHALL CREDIT TO
11 THE SAND DUNE CONSERVATION FUND INTEREST AND EARNINGS FROM FUND
12 INVESTMENTS.

13 (3) MONEY IN THE SAND DUNE CONSERVATION FUND AT THE CLOSE OF
14 THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO
15 THE GENERAL FUND.

16 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE SAND DUNE
17 CONSERVATION FUND, UPON APPROPRIATION, ONLY FOR GRANTS TO LOCAL
18 UNITS OF GOVERNMENT AND NONPROFIT ENTITIES TO CONDUCT SAND DUNE
19 RESTORATION AND ENHANCEMENT PROJECTS IN AREAS ADVERSELY AFFECTED
20 BY SAND DUNE MINING ACTIVITIES.

21 (5) IN ISSUING GRANTS UNDER SUBSECTION (4), THE DEPARTMENT
22 SHALL REQUIRE THE RECIPIENT OF THE GRANT TO PROVIDE 25% OF THE
23 TOTAL COST OF THE PROJECT FOR WHICH THE GRANT IS BEING ISSUED.