

MICHIGAN SUPREME COURT

Preserve the Dunes, Inc. v. Department of Environmental Quality

471 Mich. 508 (2004) · No. Nos. 122611, 122612 · Decided July 30, 2004

SUMMARY

The Michigan Supreme Court held that the Michigan Environmental Protection Act does not authorize a collateral challenge to the Department of Environmental Quality’s permit-eligibility determination under the Sand Dune Mining Act when the challenge is unrelated to whether the permitted conduct will pollute, impair, or destroy natural resources. The court concluded that the challenge was time-barred under either the Administrative Procedures Act or the Revised Judicature Act. It reversed the Court of Appeals and remanded for review of the trial court’s findings concerning whether TechniSand’s actual mining conduct violated the environmental protection act.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Maura D. Corrigan, Chief Justice; Michael F. Cavanagh; Elizabeth A. Weaver; Marilyn Kelly; Clifford W. Taylor; Robert P. Young, Jr.; Stephen J. Markman
JURISDICTION	Michigan
DECIDED	July 30, 2004
DOCKET	Nos. 122611, 122612
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Michigan Department of Environmental Quality and TechniSand, Inc. appealed a Michigan Court of Appeals decision that held the DEQ improperly granted TechniSand an amended sand dune mining permit under the Sand Dune Mining Act and remanded for summary disposition in favor of Preserve the Dunes.
STANDARD OF REVIEW	De novo review of questions of statutory interpretation.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion; precedential
PARTIES	Michigan Department of Environmental Quality, TechniSand, Inc. v. Preserve the Dunes, Inc.

TOPICS

environmental law

statutory interpretation

judicial review of agency action

administrative procedure act

appellate procedure

PRACTICE AREAS

environmental law

administrative law

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Michigan Environmental Protection Act authorizes a collateral challenge to an agency's determination of permit eligibility under the Sand Dune Mining Act when the alleged permitting flaws are unrelated to whether the permitted conduct will pollute, impair, or destroy protected natural resources.
2. Whether Preserve the Dunes' challenge to the DEQ's 1996 permit decision was time-barred under the Administrative Procedures Act or the Revised Judicature Act.
3. Whether the Court of Appeals should review the circuit court's findings concerning whether TechniSand's actual mining conduct violated MEPA.

HOLDINGS

1. MEPA does not provide a private cause of action to collaterally challenge DEQ determinations of eligibility under MCL 324.63702(1) or MCL 324.63704(2) when the challenge concerns permitting-process defects unrelated to whether the permit holder's conduct will pollute, impair, or destroy natural resources.
2. Preserve the Dunes' challenge to the DEQ's permit-eligibility decision was time-barred because it was filed nineteen months after the permit decision, exceeding both the sixty-day APA period and the twenty-one-day RJA appeal period identified by the court.
3. The case must be remanded to the Court of Appeals to review the circuit court's findings concerning whether TechniSand's actual mining conduct violated MEPA, because the Court of Appeals had not reached that issue.

KEY QUOTATIONS

“MEPA affords no basis for judicial review of agency decisions under MCL 324.63702(1) because that inquiry is outside the purview of MEPA.” (471 Mich. at 524-525)

“Where a defendant’s conduct itself does not offend MEPA, no MEPA violation exists.” (471 Mich. at 519)

FACTUAL BACKGROUND

TechniSand purchased a sand-mining operation with a permit that did not authorize mining in the adjacent Nadeau Site Expansion Area, which had been designated critical-dune property. After the DNR denied TechniSand's initial permit-amendment application as ineligible under the Sand Dune Mining Act, the DEQ approved a resubmitted application in 1996, and TechniSand began mining the area. Preserve the Dunes alleged both that the permit was improperly issued and that the mining conduct would pollute, impair, or destroy

protected natural resources. After a bench trial, the circuit court found that the mining's adverse impact would not rise to the level of impairment or destruction under MEPA.

PROCEDURAL HISTORY

TechniSand purchased a sand-mining operation in 1991 and later sought to amend its permit to include adjacent critical-dune property. The DNR initially denied the application as ineligible, but the DEQ approved a resubmitted application in 1996. Preserve the Dunes sued under the Michigan Environmental Protection Act in 1998. The circuit court held the permit challenge time-barred and, after trial, found no MEPA violation from the mining conduct. The Court of Appeals reversed and ordered summary disposition for Preserve the Dunes. The Michigan Supreme Court reversed that ruling in part and remanded for expedited review of the circuit court's findings concerning the actual mining conduct.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Court of Appeals was directed to review the circuit court's findings regarding whether TechniSand's actual sand-mining conduct violated MEPA and to expedite its consideration of the case.

CASES CITED

- Oade v. Jackson National Life Insurance Co., 465 Mich. 244, 250, 632 N.W.2d 126 (2001)
- Nemeth v. Abonmarche Development, Inc., 457 Mich. 16, 576 N.W.2d 641 (1998)
- Ray v. Mason County Drain Commissioner, 393 Mich. 294, 224 N.W.2d 883 (1975)
- Oscoda Chapter of PBB Action Committee, Inc. v. Department of Natural Resources, 403 Mich. 215, 232-233, 248 N.W.2d 240 (1978)
- Palo Group Foster Care, Inc. v. Department of Social Services, 228 Mich. App. 140, 145, 577 N.W.2d 200 (1998)
- Macomb County Prosecutor v. Murphy, 464 Mich. 149, 159, 627 N.W.2d 247 (2001)
- West Michigan Environmental Action Council v. Natural Resources Commission, 405 Mich. 741, 751, 275 N.W.2d 538 (1979)
- Eyde v. Michigan, 393 Mich. 453, 454, 225 N.W.2d 1 (1975)
- Oakland County Road Commissioners v. Michigan Property & Casualty Guaranty Association, 456 Mich. 590, 612-613, 575 N.W.2d 751 (1998)
- Preserve the Dunes, Inc. v. Department of Environmental Quality, 253 Mich. App. 263, 655 N.W.2d 263 (2002)