

MICHIGAN SUPREME COURT

Preserve the Dunes, Inc. v. Michigan Department of Environmental Quality and TechniSand, Inc., 471 Mich. 109

Preserve the Dunes, Inc. v. Michigan Department of Environmental Quality and TechniSand, Inc., 471 Mich. 109; 684 N.W.2d 847 (2004) · No. Nos. 122611 and 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 Michigan Department of Environmental Quality’s determination of eligibility for a sand dune mining permit under the Sand Dune Mining Act when the challenge is unrelated to whether the proposed mining conduct would harm protected natural resources. The Court concluded that the challenge to the permit eligibility determination was time-barred under either the Administrative Procedures Act or the Revised Judicature Act. It reversed the Court of Appeals on that issue and remanded for expedited review of whether TechniSand’s actual mining conduct violated the Michigan Environmental Protection Act.

CASE DETAILS

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

PARTIES

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

TOPICS

environmental law judicial review of agency action statutory interpretation administrative procedure act
appellate procedure

PRACTICE AREAS

environmental law administrative law appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether MEPA authorizes a collateral challenge in circuit court to an agency's determination of eligibility for a sand dune mining permit under MCL 324.63702(1), when the challenge is unrelated to whether the permit holder's conduct will pollute, impair, or destroy natural resources.
2. Whether Preserve the Dunes' challenge to the DEQ's permit-eligibility 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 finding that TechniSand's mining conduct did not violate the MEPA standard incorporated into the Sand Dune Mining Act.

HOLDINGS

1. MEPA does not provide a private cause of action to challenge an agency's determination of eligibility for a sand dune mining permit under MCL 324.63702(1) when the alleged permitting defect is 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 determination was time-barred because it was filed nineteen months after the permit decision, beyond both the APA's sixty-day period and the RJA appeal period.
3. The Court of Appeals must review the circuit court's findings concerning whether TechniSand's mining conduct violates MEPA and must expedite its consideration of 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.” (at 20)

“The focus of MEPA is to protect our state’s natural resources from harmful conduct.” (at 20)

“Where a defendant’s conduct itself does not offend MEPA, no MEPA violation exists.” (at 12)

FACTUAL BACKGROUND

TechniSand purchased a sand mining operation in 1991, but its existing permit did not authorize mining in the adjacent Nadeau Site Expansion Area, which had been classified as critical dune area. The DNR denied

TechniSand's initial application to amend its permit because TechniSand had acquired the operation after the statutory July 5, 1989, eligibility date. After responsibility transferred to the DEQ, TechniSand resubmitted its application, and the DEQ approved it in 1996. Preserve the Dunes filed suit nineteen months later, alleging that the permit decision violated MEPA and that the mining conduct would pollute, impair, or destroy protected natural resources.

PROCEDURAL HISTORY

TechniSand applied to amend a sand dune mining permit to allow mining in an adjacent critical dune area. The DEQ approved the application in 1996. Preserve the Dunes sued in 1998 under the Michigan Environmental Protection Act, alleging both an improper permit decision and environmentally harmful mining conduct. The circuit court held the permit challenge time-barred and, after a bench trial, found that the mining conduct did not impair or destroy natural resources under MEPA. The Court of Appeals reversed and ordered summary disposition for Preserve the Dunes. The Supreme Court reversed on the permit-eligibility issue and remanded for expedited review of the unresolved MEPA challenge to the mining conduct.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals decision on the permit-eligibility issue and remand to the Court of Appeals for expedited review of the circuit court's findings regarding whether TechniSand's mining conduct violates MEPA.

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, 309; 224 N.W.2d 883 (1975)
- Palo Group Foster Care, Inc. v. Department of Social Services, 228 Mich. App. 140, 145; 577 N.W.2d 200 (1998)
- Oscoda Chapter of PBB Action Committee, Inc. v. Department of Natural Resources, 403 Mich. 215, 232-233; 248 N.W.2d 240 (1978)
- Preserve the Dunes, Inc. v. Michigan Department of Environmental Quality, 253 Mich. App. 263; 655 N.W.2d 263 (2002)
- National Wildlife Federation & Upper Peninsula Environmental Council v. Cleveland Cliffs Iron Co. and Michigan Department of Environmental Quality, 471 Mich. ____; ____ N.W.2d ____ (2004)
- Eyde v. Michigan, 393 Mich. 453, 454; 225 N.W.2d 1 (1975)
- West Michigan Environmental Action Council v. Natural Resources Commission, 405 Mich. 741, 751; 275 N.W.2d 538 (1979)
- Macomb County Prosecutor v. Murphy, 464 Mich. 149, 159; 627 N.W.2d 247 (2001)

- Oakland County Road Commissioners v. Michigan Property & Casualty Guaranty Association, 456 Mich. 590, 612-613; 575 N.W.2d 751 (1998)
- Attorney General v. Harkins, 257 Mich. App. 564, 571; 669 N.W.2d 296 (2003)

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