



Chairman Barrett  
Senate Committee on Transportation  
Lansing, MI

Subject: Opposition to SB 429-431

Chair Barrett and Members of the Transportation Committee,

We appreciate the opportunity to discuss this important bill with the committee. This is an issue that MEC has actively engaged in over the past few years, and we appreciate all the work from the numerous stakeholders that went in to developing this latest iteration of a bill regarding aggregate mining in Michigan. While we have appreciated discussions with the Sponsor and the Aggregate industry, the bill that has been introduced is inadequate to protect the natural resources and public health of Michiganders. Below is a description of our major concerns with the bill as introduced.

### **Inappropriate Preemption of Local Control**

Though we do appreciate that when a statewide permitting program is created, it does make sense to preempt local control of those environmental regulations, this bill goes far farther than is appropriate in preempting local control.

When it comes to local control, we view there being two different criteria of regulation - environmental and character of community. When creating a statewide permitting program, setting a baseline standard that preempts local environmental regulations does make sense. Things like dust, berms, and environmental impact assessments should be done only at the statewide level. However, control should be left local when it comes to defining the character of community. Things like hours of operation and haul routes should be defined locally as these communities know best where their residents live and are most at risk of truck pollution and what times industrial facilities should run to minimize noise concerns.

This bill should change the preemption language on page 6, section 63903 to match the language from Part 632 (MCL 324.63203). This language strikes a better balance of preempting local control on environmental regulation, while allowing for locals to continue to define their character of community..

## **The Environmental Impacts**

Further, the environmental protections listed in the bill are insufficient to protect public health and the environment. There are a number of issues that are still lacking including clarifications on berming, the required studies, setbacks from residences and reclamation requirements. Additionally, the financial assurance requirements that protect taxpayers from being on the hook for cleaning up a disaster is completely inadequate to address the true cost of reclaiming a mine site.

There are a number of changes we still need to see in order to see this bill as sufficiently protective of the environment:

Page 7, Line 4 - The environmental impact assessment needs to include a hydrogeological study on top of the other listed requirements. This study would do more to describe how the groundwater flows and what potential constituent pollutants are found in the water.

Page 8, Line 10 - The setback from a property line is inadequate. The mining area should at minimum be 200 feet from any residence.

Page 9, Line 7 - There should be a requirement for native pollinator friendly vegetation on all berms in addition to the permissive language for EGLE to require trees as part of the berm.

Page 12, line 3 - The reclamation should be required to take place concurrently. The current language is permissive, and best practice to protect the environment is to include concurrent reclamation requirements. In addition, reclamation requirements need to include more to protect soil health on the site, for example a requirement that all reclaimed areas have soil that has a 3% organic content.

Page 20, Line 20 - The financial assurance provision should be modified to not allow a statement of financial responsibility. This allowance does not create true financial assurance and instead relies on the mining company to have enough assets outside of the mine, that if something goes wrong they can leverage all those assets to clean-up and reclaim the mining site.

Page 21, Line 5 - The amount of financial assurance called for here is simply nowhere near enough to cover the actual cost of reclamation. Estimates from engineers and real world examples call for \$8,000 per acre to sufficiently reclaim a mine site and protect our natural resources.

## **The Problematic Process**

Finally, this bill creates a number of processes that do not serve the best interests of protecting natural resources and public health or local communities and instead build layers of protections for extractive industry.

There are again a number of changes that we would need to see made in order to support this change to an EGLE led permitting program. The first is a threshold matter that all mines need to be brought into this permitting program within 5 years. Even though there may be some local permitting, in order to create an actual statewide oversight program all mines should be subject to it, regardless of previous local permits. This will help fund the program via the surveillance fee, as well as create an actual oversight program for mining. Additionally, there should not be a category of mine that floats between local and state permitting at the whims of the mine operator. If there is a concern with mines that have less than 1,000,000 tons total going through the full permit process, a general permit process could be added instead.

We also have concerns about the word significant in the language around amendments on page 17. This is a concern that follows through other mining statutes in the state. There needs to be a clear definition of significant in the bill or an allowance for the Department to create rules to help further define this process.

Another process piece to define is an inspection schedule. There is currently not a specific timeline for regular inspections of these mines in the bill. We would recommend a yearly inspection regimen to ensure that these mines have sufficient oversight.

The final and most important process piece is to ensure that a permit can actually be denied based on the environmental review, and not just a document list. The current process outlined on page 15, line 27, lacks clarity on exactly what the department is looking at during permit review. We again recommend pulling language from Part 632 (MCL 324.63205 (11)) to clarify this section.

## **Conclusion**

Though this is not a fully exhaustive list of our concerns, we hope this serves as a point of reference for continued negotiations around this topic. We again thank Sen. Ananich for his discussion on this bill with the aggregate industry so far this term, and look forward to continuing conversations.