

S.O.S. DUNES NEWS



Save Our Sand Dunes

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APPEAL COURT RULES - STOPS MINING

The Michigan Court of Appeals has barred TechniSand from mining in the critical dune area of the Nadeau Site in Hagar Township.

On Friday, October 4, 2002 the court issued an unanimous opinion in Preserve the Dunes case against the Michigan Department of Environmental Quality and TechniSand the mine operator. The court ruled that the MDEQ should not have issued a permit to TechniSand that allowed mining of the critical dune area.

TechniSand did not qualify for either of two exceptions that would allow mining of critical dunes.

This ruling caps a four year battle to prevent mining of these dunes. PTD filed its complaint in Berrien County Trial Court in July of 1998.

EVENTS LEADING TO THE SUIT

The Sand Dune Mining Act was amended in 1989 to prohibit sand mining in designated critical dune areas. Two exceptions to the general prohibition were allowed.

- A mine operator seeks to renew or amend a sand dune mining permit that was issued prior to July, 1989.
- The operator holds a permit and is seeking to amend the permit to include land that is adjacent to property the operator is permitted to mine, and prior to July 5, 1989, the operator owned the land for which the operator seeks an amended permit.

In 1991, TechniSand was formed and purchased some of the assets

of Manley Brothers, including the Nadeau Site. In 1994 they sought permission to mine the adjacent 126.5 acres that had never been included in the previously permitted mine.

The Department of Natural Resources (DNR) rejected the application in April, 1995, on the basis that TechniSand was not eligible to mine in the critical dune area because it had not owned the land prior to July 5, 1989.

In October, 1995, Governor Engler issued an executive order creating the DEQ and transferring regulatory authority from the DNR to the DEQ. Then in April, 1996, the DEQ suggested that TechniSand re-apply for the permit. TechniSand did so in May and a permit was issued in November 1996.

THE LAWSUIT

In July, 1998, PTD filed a complaint in Berrien County Trial Court. In it we maintained that the DEQ was without legal authority to issue the permit because TechniSand did not qualify for the exceptions to the prohibition against mining in critical dune areas. We asked the court to enjoin TechniSand from mining the critical dune area.

Judge Peterson heard a motion by defendants for summary disposition. He ruled that the action was not time barred and that PTD had standing under Michigan Environmental Protection Act (MEPA).

Subsequently, Judge Schofield ruled that PTD *was* time barred, could not

question the issuance of the permit and must proceed to trial.

The six day trial was held in May. Judge Paul Maloney presided over the trial. Due to Judge Schofield's ruling, he was unable to consider the validity of the permit or of the prohibition against mining critical dunes. Judge Maloney made a no cause of action judgement in December, 2000.

PTD filed its appeal in early 2001. Phil Neal, who joined the legal team for the appeal, made oral arguments to the court on April 10, 2002.

ISSUES

Two main matters of law were at issue in the appeal. The first was the timeliness of our initial complaint. The court ruled that there is no time limit on a MEPA action. Since the sand dune mining law does not set a time limit for an appeal of an administrative action, MEPA governs.

The second issue revolved around whether TechniSand qualified for one of the exceptions to the prohibition against mining critical dunes.

The court stated "The absurd result of this" (the DEQ's) "interpretation would be that the DEQ could 'amend' any permit that existed before July 5, 1989, to include any critical dune area" which would void any protection of the critical dunes established by the sand dune mining act.

As to TechniSand's argument that the law intended to permit expansion of a mining "operation," the court ruled it was "unpersuasive" and "unclear."

Please return this response form to support the goals of Preserve the Dunes.

If you can also contribute financially, the funds are needed to continue our struggle to preserve the dunes through distribution of information, keeping our state representatives and local officials informed, and ensuring that the laws governing sand dune mining are enforced.

Preserve the Dunes, Inc. — Response Form

Mail the completed form to Preserve the Dunes, Inc., Post Office Box 581, Riverside, MI 49084-0581

I want to preserve the dunes of southwest Michigan and am concerned about the expansion of sand dune mining.

Name(s) _____

Address _____

City, State, Zip _____

Telephone 1 _____ Telephone 2 _____

Email _____ Fax _____

In addition, enroll me(us) as a member for 2002.

Individual (\$6)

Family (\$10)

I have also included a contribution in the amount of \$ _____

Membership dues underwrite the expense of keeping members informed about efforts to preserve the dunes and monitor sand mining activities in Berrien and Van Buren counties. Checks should be made payable to West Michigan Environmental Action Council/Preserve the Dunes Fund. Contributions are tax deductible.

The court reversed Judge Schofield's ruling and Judge Maloney's judgment of no cause of action and remanded the case to trial court for entry of an order granting summary disposition in favor of PTD.

AND SPECIAL THANKS TO

In the last newsletter we listed a number of firms and individuals who have supported PTD through *pro bono* services. We omitted:

- Don Boerma (Electric Equipment Co.) who has provided the able assistance of Laurie Reed. Laurie maintains our data base of members

and supporters, sends thank-you letters and provides general administrative assistance.

We would also like to thank our board for their untiring efforts - most have served on the board for the past five years: Georgia Boerma, Robert Brickman, Steve Brickman, P. J. Canonie-Bubin, Charles F. Davis, III, Marshall Eisenberg, Hub Erickson, Herman Hoeksema, Bernard Kelley, Don Moore, Stuart Nathan, Nancy Owen, Susan Pritzker, Marilyn Rendell, Mary Stephenson, Gerard Thomas, Richard T. Williamson, and the late Eric V. Brown, Sr.

FUNDING STILL NEEDED

The court ruling is a great success, but we need your continued financial support to continue this fight. We have no staff. Work is done by the board and other committed volunteers.

There will continue to be the need for monitoring of permit applications and continuing sand dune mine operations. These require time. They require vigilance. But they also cost money. Please renew your membership.

Thank you for your support!

The printing and mailing of this newsletter was made possible a grant from the Charles Stewart Mott Foundation.

PTD WINS!

Text of ruling at: [http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20021004_C231728\(78\)_231728.OPN.PDF](http://courtofappeals.mijud.net/documents/OPINIONS/FINAL/COA/20021004_C231728(78)_231728.OPN.PDF)

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