

2/13/19 HCR 1

February 12, 2019

Senator Ed McBroom
Chairman- Michigan Senate Oversight Committee
201 Townsend Street
Suite 7200
Lansing, MI 48933

Dear Senator McBroom and oversight committee members:

As an average citizen, who has experienced extensive financial and emotional repercussions as the result of the Michigan Department of Environmental Quality, I would like to urge your support for House Concurrent Resolution 1 that would overturn Executive Order No. 2019-02.

As you know, PA 268 was enacted to create oversight and accountability of the MDEQ via the Environmental Permit Review Commission. Prior to the enactment of PA 268, the process that a citizen would navigate in order to appeal a permit denial was, and still is, egregious.

The process was and is as follows:

When a permit is denied by the MDEQ, the applicant may appeal the denial to the Michigan Administrative Hearing System. The order rendered by the judge would then be forwarded to the MDEQ director for a final signature for approval or disapproval.

This process essentially requires that a citizen hire legal council in order to appeal their case since the MDEQ is represented by the Michigan Attorney General at these hearings. Once the director signs off on a permit denial, the average citizen, with average means, is at a complete DEAD END.

This is exactly what has happened to me. In 2016 the MDEQ denied my request for a "fill" permit that I applied for on two ¼ acre residential lots. The process for denial took over two years and cost nearly \$11,000.

BEFORE I purchased this property in 2012 I was required to have an evaluation done by the MDEQ by the listing realtor. On October 1, 2012 I met with a representative of the MDEQ and the realtor at the property site. At this 10 minute meeting the MDEQ representative indicated what could and could not be done on the property per the NREPA of 1994. He indicated that what I was proposing would be allowable and that it would be a routine process not requiring the services of any outside consultants or experts. He advised me to fill out the DEQ permit application, obtain local permits, and submit the application with a \$1300 fee. His last words were: "this is an easy one." Based on the DEQ representative's unequivocal assurances, my realtor and I were satisfied with me purchasing the property. (To be clear, the representative emphasized that it was unlawful for him to guarantee that a permit would be issued based on this meeting).

Per the instructions at this October 1, 2012 meeting I submitted my application to the MDEQ in June 2014. I received a call from a new DEQ representative indicating he was sending a "correction request" letter regarding my application and that I should not be intimidated by it. In short, the letter stated that I was going to need to hire three different professionals in order to proceed with my application; specifically, experts in the area of surveying, storm water management (engineering) and wetland

delineation. Upon receiving the letter I called the DEQ representative and indicated that this was completely contradictory to what I was told by the first DEQ representative at the on-site meeting in 2012. This representative indicated that everything that was required in his letter was necessary and that we should meet on my property so that he could point out why.

We met at the site in August 2016. This new representative, like the first, indicated that the sand dune on location was "protected" by law and that it was crucial that it not be disturbed in any way. He indicated that my proposal to fill in the gulley adjacent to the dune in order to create a building site would definitely require the service of "experts" because filling the gulley could cause erosion to the dune (This comment made no sense to me since what I was proposing would actually stabilize the dune, which was in no danger of being de-stabilized, since it is overgrown with mature trees).

After this meeting, I hired a consultant who had experience with obtaining permits in my neighborhood. He indicated he could get me a permit for my lots with ease and low cost (\$2000).

After trying for nearly nine months to obtain the permit, this consulting company gave up on trying to get the permit. He claimed that DEQ promises for waivers on certain requirements were reneged upon (i.e. storm water management plan). The consultant did not have the credentials (Professional Engineer license) to do such a plan.

I proceeded to hire consultants who had the required professional licenses (surveyor and engineer) in order to complete the requirements of the MDEQ. The required survey was done in September 2015. The surveyor indicated that there was an agreement between himself and MDEQ that my engineer would finalize the plans "before the snow flies." The snow flew before the engineer had the site plans finished.

In January 2016, I received a message from my DEQ representative indicating my file had been closed and that my \$1300 fee was forfeited. I could reapply but I would have to pay the \$1300 again.

I strongly protested this action with the supervisor at DEQ (who was not even cc'd on the closure letter). She agreed that it was wrong for the representative to have closed my file without any due process whatsoever. The supervisor indicated that she would not forfeit my \$1300 fee if I would resubmit my application. She suggested that it would be advisable for me and my consultants to meet with a new DEQ representative in charge of my file to clarify what still needed to be done.

On March 1, 2016 my engineer, surveyor and I met with the new (3rd) DEQ representative in charge of my application. At this meeting this DEQ representative stated what she required to be submitted with my new application. She required that information be submitted that was never mentioned by the previous two representatives.

On April 28, 2016 the application was resubmitted with the required information. Throughout the following months my engineer, surveyor and myself responded to "additional information" requests by the MDEQ. I inquired as to when my file would be "administratively complete" so that a decision could be rendered by the department. **My representative indicated that it was not known what additional information would be needed in order for my file to be "administratively complete."** During the summer 2016 my application was in a limbo state of not being "administratively complete" which meant that no decision could be forthcoming from the department. On August 12, 2016 I received a letter from the second DEQ representative who handled my file. He was requesting information that had already

been provided to the previous representative (#2). He indicated that the application was still not "administratively incomplete."

This August 12 letter had a litany of requirements that had to be met. The letter had the usual threat: "Should we not receive the requested information from you within 30 days of this letter, the permit application will be considered withdrawn and the file will be closed." (The letter takes approximately 1 week to reach my address, leaving 3 weeks in reality to meet the 30 day deadline). I called the supervisor at the DEQ office and reminded her of our agreement made in January that I would have no further contact with this representative who had closed my file without notice in January (as I learned later this closure was illegal per PA 98 which allowed for a file to be open for 24 months at the option of an applicant; mine was closed after 19 months).

In November, after my surveyor completed re-staking the house, drive and septic parameters (it was determined by DEQ that my staking of the boundaries would not be acceptable even though that was the instruction given to me by the 1st DEQ representative on October 1, 2012 at the "pre-purchase" meeting) the DEQ conducted a site inspection on November 17, 2016. In a December 2, 2016 letter from DEQ, it was stated that the site inspection conducted by DEQ revealed that the consulting work done by my licensed consultants was satisfactory and that DEQ corrected the errors. **In addition, The DEQ had determined that my entire application was for naught.**

In this December 2 letter, the DEQ indicated that the department "had identified options for alternative layouts for the proposed development"

THE MDEQ WAS STATING IN THIS LETTER TO START THE ENTIRE APPLICATION PROCESS OVER. After emphasizing since October 2012 that the sand dune was completely off limits and could not be affected in any way, the department was now suggesting that I should resubmit my proposal with the homes located **directly on top of the sand dune**. They had detailed drawings submitted in this letter demonstrating what their ideas were for the development (This was in complete defiance of Rule 281.922a issued by the director of the DEQ stating: "Part 303 of PA 451 does not authorize the DEQ to locate or design an alternative.") **THIS WOULD REQUIRE AN ADDITIONAL \$4000 IN PERMIT APPLICATION FEES TO THE MDEQ AND, ACCORDING TO MY SURVEYOR, UP TO AN ADDITIONAL \$6000 IN SURVEY AND ENGINEERING FEES.**

According to my surveyor, this would all be for naught since the slopes on the dunes exceeded the minimum that is allowed for development on protected dunes. FOIA'd DEQ documents confirmed the DEQ had knowledge of my surveyor's assessment as was stated to me by both the 1st and 2nd DEQ representatives at on-site meetings.

I protested what I considered to be extortion by the MDEQ to the chief of the Lake Michigan region of the DEQ. I told him I could not afford to spend any additional money on pursuing a permit. He responded to me, via email, that the MDEQ would deny my permit if I did not succumb to their demands. **I was being told to spend \$4000 more in fees and \$6000 in consulting in order to maybe get a permit** (a permit I was told by DEQ at two on-site meetings that I was not eligible for). If this is not outrageous conduct by a government agency, then what is?

On March 13, 2017 I received a letter from the MDEQ stating that my **permit request was denied** because it was "NOT IN THE PUBLIC INTEREST." It is hard to comprehend that a proposed home development, with a dozen houses adjacent on each side of the home, in a subdivision with over a

hundred homes and no issues whatsoever regarding pollution could not be in the public interest. It is equally hard to believe that a supervisor, or anyone in management from DEQ, never set foot on my lots to determine the validity of what DEQ field staff were doing. DEQ management delegated all decision making and field analysis up to low tenure, unsupervised, untrained and inexperienced employees.

I appealed my denial to the Michigan Administrative Hearing System. The judge ("I've never handled a DEQ case before") upheld the DEQ's denial reiterating it was not in the public interest due to the fact that "aller" ducks (?) were observed nesting in the wetland (among other nonsensical reasons). The then director of the MDEQ signed off on the MAHS's decision.

What recourse does a citizen have when the heavy boot of the MDEQ is placed on their neck? The legal costs of pursuing a reversal are prohibitive for most every citizen. There is no recourse! That is why PA 268 was passed by the legislature last year to provide some measure of justice to an aggrieved citizen. Some in authority have stated that the oversight commission jeopardizes "clean water" in the state and that the commission is stacked with industry polluters trying to circumvent environmental laws. But reviewing the credentials of the appointed commission members contradicts this assertion. The panel is made up of individuals with scientific and technical backgrounds in engineering, hydrology and geology, etc., as the statute requires.

I have characterized the conduct of the MDEQ as Nazism. Their de-facto confiscation of my property is no different than what happened to much of the citizenry of Germany in the 1930's and 1940's. Low level, inexperienced, untrained and unsupervised employees of the department have the authority to destroy people's lives and dreams. This unfettered power that the MDEQ has to put citizens in financial jeopardy, not to mention mental duress, is reprehensible. There should be no place for it in a democratic society. No senator's constituent should ever experience what my family has experienced with the MDEQ.

I urge every member of the Michigan Senate to vote yes on HCR 1 in order to maintain some semblance of accountability on the MDEQ.

If the committee has any questions, feel free to contact me anytime.

Respectfully,

Dale Stange
Citizen (one of many ripped off by the MDEQ)
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P.S. On March 1, 2019 the subject property will go into forfeiture in Schoolcraft County. What citizen can be expected to pay property taxes on residential lots that have been declared off-limits, and therefore worthless, by the State of Michigan? This is a personal loss of over \$90,000 to me, an average citizen!! PA 268 was enacted by the legislature, and signed by the governor, with much thought and consideration to stop this kind of theft by the state of Michigan. It should not be abolished by decree!