

## **"The Slippery Slopes of Ice Mountain"**

By: Joseph E. Quandt

In what may become a watershed case (pun intended) a Michigan Circuit Court has determined that groundwater withdrawals which may affect wetlands and streams are prohibited under Michigan law. This case may have broad implications as it is one of the first Michigan cases to deal with environmental impacts as a result of groundwater withdrawals. This decision could impact other large quantity groundwater users such as golf courses, food processors and farmers.

Perrier bottling company purchased a tract of land in Mecosta County after conducting extensive tests to determine if groundwater wells would yield water of sufficient quality and volume for bottling purposes. The Perrier plan was met with immediate concern and skepticism among environmentalists and neighbors. After public meetings regarding many environmental concerns, both state and local officials approved the plan.

Opponents of the Perrier plan brought suit claiming that the plan would cause detriment to surrounding wetlands, streams and lakes. Essentially, the plaintiffs claimed that the plan to extract groundwater in the quantities sought by Perrier would result in a "cone of depression" which would draw water away from other resources that are water dependent. Perrier then transferred the development to Nestle who was the defendant for the remainder of the case. Prior to trial, the claims and defenses were winnowed down to a question of whether or not the Nestle plan violated the Michigan Environmental Protection Act (MEPA) and common law. The MEPA provides, among other things, that no person may significantly impact the environment through their activities. The factual question for the court to resolve was whether or not the affects of the groundwater withdrawal was significant enough to warrant the courts intervention as a MEPA violation. In a well reasoned and thorough opinion, the court decided that the Nestle "Ice Mountain" operation would create a significantly negative impact on surrounding wetlands, streams and lakes. Thus, the court issued an injunction requiring that the Nestle operation be shut down. The court provided a 21 day delay to its injunction which would provide Nestle an opportunity to appeal the decision to the Michigan Court of Appeals which it most certainly will do. An appeal will be an uphill climb for Nestle considering the extensive record developed during the trial and the painstaking efforts of the trial judge to document the basis for his decision.

Critics claim that the decision puts over 80 employees out of work and will deprive Nestle of a multi million dollar asset and the community of significant tax base due to a speculative guess about what damage may come to the environment as a result of the operation. Critics also claim that it spells trouble for the future of other large quantity water users such as golf courses, farming operations and food processors. Included in this group are other soft drink bottlers. Critics claim that this decision will encourage litigation wherever a water dependent business wants to locate an operation in an area where the neighbors are unhappy about other aspects of the business and wish to use the water withdrawal issue as a pretext to keep an otherwise lawful business out of their "back yard."

Hopefully, recent legislation regulating some water withdrawals will help bring some clarity as to where a business or farming operation can be located and how much water can be used. However, as the current litigation demonstrates, even if water withdrawal is permissible under other laws, it must still withstand scrutiny under MEPA unless MEPA is amended in favor of a more comprehensive (and hopefully predictable) regulatory approach.

Court decisions on environmental issues are frequently like throwing small stones in a still pond - you always see ripples but rarely see waves. Regardless of which side you favor in this water withdrawal dispute, the result will likely create significant waves for some time to come.

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