

Michigan: New proposal would impose excise tax on bottled water production



David M. Kall | Wednesday, November 22, 2017

In June 2016, Nestlé Waters North America, a segment of the Swiss food and beverage company Nestlé, submitted a permit application to the Michigan Department of Environmental Quality (MDEQ) seeking permission to increase the amount of water it withdraws from the state. MDEQ sought public comments, held a public information session, and posted a wide variety of information on its [website](#) pertaining to Nestlé's application specifically, as well as more general information, like maps, models, streamflow data, and the like.

Facts and figures

For example, in its water withdrawal process information [sheet](#), it described registration and water use reporting requirements, and the computer model used to determine whether the proposed withdrawal is likely to cause an adverse resource impact to stream flow and fish populations, among other things.

In another link, to [2015 water use statistics](#), the MDEQ provided the following information:

- There are 6 trillion gallons of water in the Great Lakes.
- 658 gallons per minute flow in a stream that is 1 foot wide, 1 foot deep, flowing 1 mile per hour.
- 625,600,000 gallons end up in 1 inch of rain falling over 1 township area (36 sq. miles).
- Consumptive use by all Michigan (power, industry, agriculture, etc.) is 357,083 gallons per minute, or 187,700,000,000 gallons per year.

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This link also showed that in 2015, Michigan's total water use by sector was the following:

- Electric power generation: 79 percent
- Public supply: 11 percent
- Industrial: 7 percent
- Agricultural irrigation: 2 percent
- Livestock: 0.5 percent
- Non-agricultural irrigation: 0.3 percent
- Commercial: 0.09 percent
- Bottled water: 0.01 percent
- Other: 0.09 percent

Yet another link the MDEQ posted was to the [Nestlé Permit Overview](#), which revealed that the company wanted to increase its continuous water withdrawal rate from 250 to 400 gallons per minute, and that currently, it only pays a \$200 annual water use reporting fee for the privilege of withdrawing all that water. It paid \$5,000 for the permit application.

The public comment period was extended three times, and finally closed on April 21, 2017. During that time, MDEQ received more than 50,000 comments, covering topics like environmental protection/damage/impact, resources rights, and water quality. MDEQ also received 340,000 signatures via petition, though the petition's language is not posted on the MDEQ website.

Over the summer, *Fortune* made an issue out of the arrangement, [accusing](#) Nestlé, which holds the number 64 position on the Fortune 500, of “paying only \$200 to take 130 million gallons of Michigan's water” annually. Citing the company's annual report, *Fortune* noted that Nestlé Waters “created more than \$4.5 billion in U.S. and Canada sales during Fiscal Year 2016.”

Trying to make Nestlé pay

At least one Michigan lawmaker is not happy that Nestlé pays so little for the water that comes from state resources. Last month, Peter J. Lucido, a member of the House of Representatives, posted a vigorous rebuke of this situation on his [Facebook page](#): “Let me get this straight: companies extract OUR water from OUR lakes, bottle the water, and sell it back to US. All the while we desperately need funds to fix Lake St. Clair and keep our water clean or repair our water infrastructure.”

That same day, Rep. Lucido introduced legislation, [HB 5133](#), or the “Michigan bottled water excise tax act,” that would impose a 5 cents per gallon excise tax on the production of bottled drinking water. It also provides for the levy's collection and administration, reporting requirements, penalties, exemptions, refunds, and distribution. A “bottled water operator” is defined as a “person engaged in producing bottled drinking water from a source in this state under a permit or approval under the safe drinking water act.”

The measure also requires the revenues, penalties and costs from the levy to be paid into the state treasury, in a restricted account, and used only for infrastructure improvements.

A [WNEM story](#) published just after Rep. Lucido introduced his bill asserted that Nestlé stands to lose \$20 million annually for the 1.1 million gallons of water it withdraws daily from the state.

On the other hand, a Nov. 15, 2017 [Bloomberg piece](#) pointed out that, according to MDEQ data, “Nestlé's rate of groundwater extraction...pales in comparison to the estimated 6.9 billion gallons of water extracted from Michigan in 2015 by pharmaceutical giant, Pfizer...” Pfizer is not a bottled water operator, so would not be subject to the tax. The piece wondered whether, “if enacted, this tax [could] bring constitutional challenges because of its applicability to only those groundwater extractors in the bottled water business?”



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