

MSC Opinion: Anglers of the AuSable, Inc. v. Dep't of Environmental Quality

26. April 2011 By Gaetan Gerville-Reache

On April 25, 2011, the Michigan Supreme Court on rehearing vacated its earlier opinion in [Anglers of the AuSable, Inc. v. Department of Environmental Quality, No. 138863-138866](#), and the opinion of the Court of Appeals, on the ground that the underlying controversy is moot because the Merit Energy Company lost its disputed discharge rights. In its earlier opinion, a four-justice majority had overruled prior precedent in *Preserve the Dunes v. Department of Environmental Quality*, 471 Mich 508, 684 NW2d 847 (2004), which had held that the MDEQ may not be sued under the Michigan Environmental Protection Act (MEPA) for issuing a permit. Justices Young, Corrigan, and Markman dissented, arguing that the case should be dismissed as moot and that *Preserve the Dunes* should not be overruled. Now that the earlier opinion in *Anglers of the AuSable* is vacated, *Preserve the Dunes* is once again controlling precedent, and the MDEQ may not be sued under MEPA for issuing a permit.

The Court's change of course resulted from a change in the Court's composition after issuing its earlier opinion on December 29, 2010. Justice Mary Beth Kelly replaced Justice Alton Thomas Davis, and Justice Brian K. Zahra replaced Justice Maura D. Corrigan. On rehearing, Justice Mary Beth Kelly disagreed with the view of her predecessor, Justice Davis, and instead supported the dissent. As a result, Justice Young's dissent received majority support. To see the order granting rehearing and vacating the earlier opinions, click [here](#).