

*On behalf of the Gonzalez Saggio & Harlan LLP Environmental Law Practice, we are pleased to provide you with the following article, which was published in the **May 2012 Wisconsin County Mutual Insurance Corporation :: Legal Bulletin***

Overview of Frac Sand in Wisconsin

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"Hydraulic fracturing" is the process by which water, chemicals and sand are pumped into petroleum-bearing shale formations under high pressure to open fractures in the rock that allow more oil and gas to be extracted. The sand lodges in the fractures and keeps them open to provide an escape route for the oil and gas that would otherwise remain trapped in the rock. Wisconsin is involved in frac sand mining because our state has abundant, high quality sand resources spread over a large part of the state. The suddenly popular "frac sand" is mined in Wisconsin for out-of-state use in extracting oil and gas. Sand mining will occur wherever regulations reasonably allow it and high quality sand is close to a railroad or large river system to inexpensively transport the product to market.

Influenced by increasing world demand for oil and gas, hydraulic fracturing, sand mining in Wisconsin is here to stay, and the number of mines will increase significantly. The Wisconsin Department of Natural Resources estimates there are as many as 60 operating mines and dozens of proposals for new mines in Wisconsin. In 2011, Wisconsin produced 12 million metric tons of sand and ranked third out of eight major producing states. behind Illinois and Texas.



Historically, Wisconsin's rich mineral endowment resulted in a mining legacy so important that four of the nine symbols on the State Seal signify mining (miner figure, stack of lead ingots, crossed pick and shovel and the badger). Today, county and town governments in western, central and southern Wisconsin are rushing to consider whether to adopt additional regulation of sand mining and processing operations.

Sand mining is minimally regulated by mining-specific state regulations that require each county to have a mine reclamation ordinance. However, other potential legal concerns are regulated by issue-specific federal and state statutes and regulations. If counties did nothing but regulate mine reclamation, existing federal and state regulations would cover the following impacts: air; stormwater; groundwater; surface water; wastewater; soil contamination; endangered species; noise; blasting; scenic view impairment; roadway use; traffic safety; roadway damage; land reclamation; and adverse health effects.

What does probable increased mining activity mean for our state? Sand mining can improve the local economy with high paying jobs of long duration, but displaces other land uses and may bring increased traffic and other impacts to a rural area. County and town governments can play a formative role in enabling an orderly discussion of mining issues if they prepare to deal with public controversy, permit applications, continued operations, and mine reclamation.

Popular concerns at the grass roots level have already led to considerable local opposition to sand mining and several lawsuits. Citizen groups are currently seeking tools and skills from long-standing public interest legal advocacy firms. The introduction of a sophisticated environmental organization can produce a very intense level of cooperation and compromise.

for constructive and coordinated public discussion on whether and how to regulate; others have passed ordinances to regulate non-metallic mining. A moratorium that is planned and used wisely can result in a structured social dialog carried out as part of an open regulatory process, and can lead to appropriate and effective regulation of the sand mining industry. Moratoria are now subject to Wisconsin Statute section 66.1002, and their drafting involves important questions that may require legal crafting to ensure they are defensible.

Proposed regulations benefit from careful crafting, including how to transfer costs that may be greater than anticipated for ordinance administration and correcting potential harms. Ordinances should consider the lasting importance of reclamation plans, development of adequate sources of topsoil for reclamation and a mechanism for periodic mid-operation permit and mining plan review. Appropriate regulations will allow sand mining and reclamation to occur in a responsible manner, providing an optimal combination of economic and employment opportunities and environmental protection.

William P. Scott is a professional geologist and environmental lawyer, representing public and private clients throughout Wisconsin on mining, brownfields, water and environmental regulatory matters. On July 23, 2012, Mr. Scott will be speaking on the Legal Aspects of Permitting a Sand Mine at the [Proppants Summit](#) in Denver, Colorado. Mr. Scott has also been invited to speak on this topic at the [2012 Wisconsin Counties Association Annual Conference](#) in La Crosse, Wisconsin on September 24, 2012.

The original article and newsletter can be accessed using this [link](#).

Please contact GSH if we can answer any questions regarding this article.

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