

Public Comments by Gary Yakesh concerning
Preferred Sands mining permit (review draft dtd Aug. 29th, '12)

October 7th, 2012

Cooks Valley's Non-metallic Mining Ordinance was born out of the need to protect the health and welfare of citizens of the township against the backdrop of huge industrial sand mines parked right next door to our homes.

A vast majority of the good citizens of this township were not allowed to say a peep while 3 industrial sand mines were thrust upon us in Cooks Valley.

You, the town board of Cooks Valley, representing *all* the citizens of Cooks Valley, are entering the home stretch of the permitting process. I think this draft is really well written but, since this permit will be considered a model for all future permits, I have some serious reservations with the following items listed below:

Section

2.4 Permit reads: *If any term or condition of this permit is violated by Permit Holder, the town shall notify the Permit Holder and Permit Holder **shall work to cure such violation in a timely manner.***

- Cooks Valleys Non-Metallic Mining Ordinance specifically states in in Section 2.05(4):
"The town permit shall be void if the permittee violates any condition of the permit or any conditions of any Federal, State, or County permits.

- "Timely Manner" is a really vague and subjective term. I feel there needs to be a time limit put in this section. Otherwise violations may get strung out while Permit Holder puts on a show of minimal effort.

- What about chronic, multiple, or a pattern of violations?

6.1 Permits reads: *Permit Holder may conduct blasting at the mine property only between the hours of 10 am and 3 PM.*

- There is no day(s) of the week specified here. Is blasting going to be allowed on Sunday / Holidays?

9.2 Permit reads: *A failure by Permit Holder to comply with the provisions of any permit issued by any governmental authority related to Permit Holder's mining operations at the Property **shall not constitute a violation** of this Permit unless the subject permit is permanently revoked by the applicable governmental authority.*

- Once again - Cooks Valleys Non-Metallic Mining Ordinance specifically states in in Section 2.05(4):
"The town permit shall be void if the permittee violates any condition of the permit or any conditions of any Federal, State, or County permits.

- I feel that a violation of "the provisions of any permit issued by any governmental authority related to Permit Holder's mining operations at the Property" **should be considered a violation** of Cooks Valley's permit.

- What about chronic, multiple, or a pattern of violations of any other governmental authority?

- The main reason Cooks Valley has a non-metallic mining ordinance is because other governmental authorities do not do an adequate job of policing non-metallic mines.

The Wisconsin DNR has a very public record of not enforcing the laws that the legislature has tasked it with.

A) EC Leader, 8/26/2012 article - In the past, the state Department of Natural Resources has maintained it has little authority to restrict high-capacity wells. But that may have changed with a unanimous ruling by the state Supreme Court last summer in which The court ruled: "... the DNR has the authority and general duty to consider whether a proposed high-capacity well may harm waters of the state."

Dan Baumann, director of the DNR west-central regional district, maintains the DNR currently lacks that authority, although he agrees multiple wells can have a cumulative effect on groundwater, streams and lakes, and also nearby residential wells. "The groundwater doesn't know there's a property line," he said.

B) Silica study done by DNR scientists (NR445) was to have been completed under Administrative Rule by July 1, 2006. It was finalized and submitted 5 years late! – August 2011

C) Chippewa Herald article dtd 12/3/2011 – “Thomas Woletz, senior manager and a special projects coordinator for the DNR, estimated the agency will inspect large sand operations once every two years. It may be five years before medium-sized operations are inspected, and much smaller operations may not be inspected.”

“There’s a lot of (sand mines) and there’s few of us, so we won’t be there as frequently as we want to,” he said. Woletz also said the *DNR is stretched thin for all of its programs.*

D) Barron News Shield, Letter to the editor by Roberta Dzimielna, dtd 1/27/2012 - “At the Wisconsin Towns Association Frac Sand conference held in Eau Claire, Thomas Woletz, speaking on behalf of the DNR, made a point to acknowledge that the *DNR is not currently equipped to handle the current boom in this industry.*”

9.3 Permit Reads: *A violation by Permit Holder of any law, regulation or ordinance applicable to Permit Holder’s operations on the Property shall not constitute a violation of this Permit so long as Permit Holder is working diligently with the governmental authority(ies) charged with administering such law, regulation or ordinance to cure such violation.*

- It bears repeating - Cooks Valleys Non-Metallic Mining Ordinance specifically states in in Section 2.05(4): “The town permit shall be void if the permittee violates any condition of the permit or any conditions of any Federal, State, or County permits.

- and again - “Working Diligently” is a really vague and subjective term.

- and again - I feel that “A violation by Permit Holder of any law, regulation or ordinance applicable to Permit Holder’s operations on the Property should be considered a violation of Cooks Valley’s permit.

- As of March 2011, Preferred Sands was blasting at the LaGessee Mine. By May 2011, they were mining full bore.

- No Fugitive Dust plan was in place until August 2011. (see CV meeting minutes dtd 6/28/2011) I talked to Jeff Johnson at the regional DNR office in EC on the afternoon of 7/12/11, he said that a “Paul McLean” was on his list of people to contact sometime in the near future about coming up with a fugitive dust plan.

- Their DNR Storm Water Plan is dated November 15, 2011.

- Road Haul Agreement dated May 9th, 2011 calls for:

- A - Tarped Trucks

- B - No Jake Break usage

- C - 45 MPH speed limit

- D – Returning trucks to use Highway 64.

- Cooks Valley’s meeting minutes of May 20th, June 13th, and June 28th, 2011 all have accounts of the above 4 rules being broken.

- To my untrained eye, apparently, “working diligently” means to some people, “when I get around to it”.

I realize that the mining interests would just as soon regulate themselves within the confines of the Wisconsin DNR regulations and the County’s reclamation ordinance, but that would be putting the fox in charge of the henhouse. Their efforts to destroy our non-metallic mining ordinance included a recall effort, multiple attempts to revoke Cooks Valley’s village powers (effectively throwing out every single one of our ordinances), and fighting this town board with litigation at every turn & all the way the Supreme Court.

Maybe it is just me, But when I hear the terms, “timely manner” and “working diligently” in reference to actions by a sand mining company, I don’t get a warm & fuzzy feeling all over.

Thank you for taking the time to listen.

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