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## **Legal Considerations for Wisconsin Frac Sand Mining Projects**

**By Bryan C. Esch and Cari Anne Renlund**

**January 2013** – Every frac sand project requires the negotiation and drafting of numerous agreements to secure value for and allocate risk among the parties to the mining transaction. Landowners and mining companies may enter into options to purchase, exploration and testing agreements, real estate purchase agreements (with or without retained royalty rights), lease agreements, permanent or temporary easement agreements, hunting and water rights agreements, and other miscellaneous agreements. The legal and business provisions of these agreements are often project and location-specific. Lease terms, real estate purchase prices, royalty rates, and methods for measuring royalties vary greatly because of the business practices of the mining companies and preferences of landowners involved.

In addition to the agreements with landowners, mining companies will also need to enter into contracts for the construction of processing plants and mine improvements, contracts for the reclamation of the mined land, transportation contracts with trucking or rail companies, and sometimes agreements with local units of government.

Each frac sand project in Wisconsin will need a variety of federal, state and local approvals or permits before, during and following mining operations. These permits will include zoning approvals as well as mining, reclamation, water and air permits.

A frac sand project (a non-metallic mining project) will need to obtain both zoning approval and a mining permit from the county in which the project is located prior to operation. Local opposition to sand mining projects, especially those that require on-road transportation and can be expected to exact heavy wear on local roads, has cropped up in several Wisconsin counties. Some have even adopted moratoriums against nonmetallic mining. However, other counties are very supportive of these projects and the economic development that comes with them.

A frac sand project will also need a reclamation plan and a reclamation permit from the county in which the mine is located before operations begin. Upon completion of mining operations, each non-metallic mine operator is required to return a site to pre-mining conditions according to uniform reclamation standards. Those standards address a variety of environmental protection measures, including topsoil salvage and storage, surface and groundwater protection, and other reclamation activities. If acceptable to the regulating county, the reclamation plan will be approved and adopted into a reclamation permit that remains in place for the life of the project. Any major modifications to the reclamation plan would have to be approved prior to implementation.

Air and water permits are also necessary for every frac sand mine. Both dust and hazardous air pollutants may be generated by mining operations, and those emissions will be regulated by the Wisconsin Department of Natural Resources (WDNR). In addition, a sand mine is likely to require a variety of water-related permits. The number and complexity of those permits will be driven by the specific site and its proximity to and interaction with water bodies. WDNR will

require permits for the discharge of wastewater and storm water runoff, as well as any high capacity wells that may be required. If wetlands will be impacted, either by discharges or excavation, or if an operation is in a floodplain, additional permits from the United States Army Corps of Engineers (ACOE) or WDNR may be required.

Finally, state law requires counties to determine and collect certain fees from mine operators. These fees are meant to reflect the reasonable and actual costs the county incurs in administering its mining programs. In addition, mining operators must provide a surety bond or other financial assurance to the county prior to operations. This financial assurance is meant to guarantee that funds are available to perform site reclamation in the event the mining operator defaults on its reclamation obligations.

Though these permitting obligations may sound overwhelming, the attorneys at DeWitt Ross & Stevens have the experience, knowledge, and relationships with the regulatory authorities to guide you through this process from beginning to end.

Whether you are a landowner or a mining company representative, competent, knowledgeable legal assistance from lawyers with specific frac sand and mining experience will add value to your mining project.

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