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711 North Bridge Street
Chippewa Falls, WI 54729-1876

February 19, 2015

Johnne Smalley
E9760 780th Ave.
Colfax, WI 54730

Decision on Review – Northern Sands, LLC

Dear Ms. Smalley:

Pursuant to ch. 60.09 Wis. Stats. please find attached the Chippewa County Department of Land Conservation & Forest Management's (LCFM) "Decision on Review" of your request for a review of determination.

It is your right to appeal of this decision. State Administrative Code NR 135.30(1) provides the legal authority for you to appeal if you so choose. NR 135.30(1) reads as follows:

“NR 135.30 Review of permit decision.

(1) COUNTY OR MUNICIPAL PERMIT DECISION. Notwithstanding ss. 68.001, 68.03(8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on a county or municipal regulatory authority's decision to issue, deny or modify a nonmetallic mining reclamation permit.”

Chapter 68.10 of Wisconsin State Statutes provides the timeframe and process that must be followed for an administrative appeal. Ch 68.10 Wis. Stats. reads as follows:

“68.10 Administrative appeal.

(1) FROM INITIAL DETERMINATION OR DECISION ON REVIEW.

(a) If the person aggrieved did not have a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may appeal under this section from the decision on review and shall follow the procedures set forth in ss. 68.08 and 68.09.

(b) If the person aggrieved had a hearing substantially in compliance with s. 68.11 when the initial determination was made, the person may elect to follow the procedures provided in ss. 68.08 and 68.09, but is not entitled to appeal under this section unless granted by the municipal authority. The person may, however, seek review under s. 68.13.

(2) TIME WITHIN WHICH APPEAL MAY BE TAKEN UNDER THIS SECTION.

Appeal from a decision on review under s. 68.09 shall be taken within 30 days of notice of such decision.

(3) HOW APPEAL MAY BE TAKEN. An appeal under this section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.”

If you choose to appeal this “Decision on Review” you must file or mail a written notice of appeal to the Chippewa County Department of Land Conservation & Forest Management within 30 days (on or before March 21, 2016).

Sincerely,

Seth E. Ebel, P.E.
Project Engineer

c: Paul Van Eijl, Northern Sands
Paul Ayres, Red Flint Group
Dan Masterpole, County Conservationist
Todd Pauls, Asst. Corp Counsel

**CHIPPEWA COUNTY'S RESPONSE TO REQUEST FOR REVIEW OF PERMIT
DECISION TO ISSUE A NON-METALLIC MINE RECLAMATION PERMIT, WITH
CONDITIONS, TO NORTHERN SANDS, LLC FOR THE ALBERTVILLE VALLEY
MINE (PERMIT #2015-01)**

Background

Chippewa County, acting through the Department of Land Conservation & Forest Management, is the designated regulatory authority responsible for administering a County non-metallic mining program and reclamation ordinance, adopted under the authority of WI Administrative Code NR 135.32.

On November 18, 2015, the Department of Land Conservation & Forest Management issued a non-metallic mine reclamation permit with conditions to Northern Sands, LLC for the Albertville Valle Mine (Permit #2015-01).

On December 21, 2015, the Department of Land Conservation & Forest Management received a request for review of the permit decision to issue the reclamation permit, filed by Johnne Smalley under the authority of NR 135.30.

That request included a request for an extension of the time for administrative review, to allow the aggrieved persons the opportunity to provide additional evidence in support of their filing. In response to that request, the Department of Land Conservation & Forest Management, and Johnne Smalley agreed that written evidence and argument would be submitted no later than January 20, 2016, and that the Department of Land Conservation & Forest Management would provide a decision on review no later than February 19, 2016.

On January 20, 2016, the Department of Land Conservation & Forest Management received the supporting written evidence and argument transmitted by email. That document is provided as Exhibit I.

The Department of Land Conservation & Forest Management has reviewed the material submitted in support of the request for a review of the determination, as filed under NR 135.30, and has prepared a response.

Exhibit I - Aggrieved Persons email

This response is as follows:

1. AGGRIEVED PERSONS CONCERN

The request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(c), on the basis that the applicant has shown a pattern of serious violations of environmental law related to non-metallic mining reclamation.

The request for review provides a general statement supporting a denial under NR 135.22. The statement reads:

“Northern Sands, LLC has more than 20 DNR violations of inappropriate exploratory borehole abandonments in Chippewa County. Leaving holes open can create a direct conduit for entry of contaminants to waters of the state and is a serious violation of ch. 281, Wisconsin Statutes and ch. NR812, Wis. Adm. Code”

COUNTY RESPONSE

NR 135.22(1)(c)1. & 2. provide the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit.

NR 135.22(1)(c)1. & 2. read as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(c)

1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.
2. The following may be considered in making this determination of a pattern of serious violations:
 - a. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.
 - b. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter.
 - c. Forfeitures of financial assurance.”

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(c)1. & 2. have not been met.

The facts considered and rational for this finding are as follows:

- A. The aggrieved persons have provided evidence that there was a Notice of Violation (NOV) issued to Northern Sands, LLC alleging violations of State Admin. Code 812 that may have occurred through improper borehole abandonment.
- B. This case has been referred to the Department of Justice by DNR, however this case has not been resolved.
- C. The aggrieved persons have not presented evidence of other violations.
- D. Chippewa County does not have sufficient evidence to determine that there has been a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation that justifies the denial of a permit.

2. AGGRIEVED PERSONS CONCERN

A request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(a), on the basis that the applicant has not provided an adequate reclamation plan.

The request for review provides a statement supporting a denial under NR 135.22. This statement reads:

“Northern Sands has failed to provide an adequate reclamation plan, even after being given the opportunity to make corrections. The Addendum prepared for Red Flint (the site manager) addresses a number of areas, but many things are left to be submitted by a future date when there is no chance of a public hearing. Many remedies are to be worked out at a future time without a public hearing. Other things are contradictory, vague, unclear, or not addressed.”

Several items related to the statement above are listed in the in the request for review.

COUNTY RESPONSE

NR 135.22(1)(a) provides the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit. NR 135.22(1)(a) reads as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by this chapter or the applicable reclamation ordinance to the regulatory authority.”

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(a) have not been met.

The facts considered and rational for this finding are as follows:

- A. The aggrieved persons have not presented evidence showing the adequacy or lack thereof that substantially affect the ability of the applicant to meet the reclamation standards, reclamation plan objectives, or permit conditions.

- B. The applicant initially met all requirements for permit application and plan submittal as established in NR 135.19.
- C. The County conducted a detailed plan review and made a determination that the plan was substantially complete.
- D. A public informational hearing was properly noticed and conducted, following procedures established in NR 135.20.
- E. Upon considering public comments and testimony received through the hearing process the applicant submitted a detailed plan amendment that provided additional detail that clarifies operational procedures to be applied to reclaim the mine site and to measure reclamation success.
- F. Upon receipt of the plan amendment, and upon considering the public comment received through the public hearing process the County made a determination that the application, reclamation plan, and plan amendment met all requirements for plan submittal, public notice, and plan content as established under NR 135.19, and issued the reclamation permit with conditions.
- G. The permit conditions issued were developed to assure that the reclamation plan will be properly implemented and that the reclamation standards contained in Subchapter II of NR 135 (NR 135.05 through NR 138.18) will be met over time.
- H. The permit conditions, as established, are consistent with the permit conditions issued to other industrial sand mine applicants that have recently applied for and received reclamation permits.

3. AGGRIEVED PERSONS CONCERN

The request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(a), on the basis that surety bonds are not adequate forms of financial assurance.

The request for review provides a general statement supporting a denial under NR 135.22. The statement reads:

“Surety Bonds are not adequate forms of financial assurance for reclamation.”

The request for review includes excerpts of documents written by experts or industry professionals regarding the risks associated with using surety bonds as a form of financial assurance.

COUNTY RESPONSE

NR 135.22(1)(a). provides the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit. NR 135.22(1)(a). reads as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by this chapter or the applicable reclamation ordinance to the regulatory authority.”

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(a) have not been met.

The facts considered and rational for this finding are as follows:

- A. The County has reviewed the excerpts of documents submitted by the aggrieved persons concerning the use of surety bonds as a form of financial assurance for mine reclamation.
- B. NR 135.40(4) defines the form and management of financial assurance that can be used by mine operators. Surety bonds are listed as an acceptable form of financial assurance under NR 135.40(4).

- C. Permit condition 2.b. requires the Operator to provide financial assurance in the amount that equals, as closely as possible, the cost to the regulatory authority of hiring a contractor to complete reclamation according to the approved reclamation plan, and that the amount of financial assurance shall be reviewed periodically by the Department to assure it equals the current estimated reclamation costs.
- D. NR 135.40(8) provides the County with the authority to claim financial assurance if the Operator fails to maintain financial assurance or fails to comply with the reclamation plan and permit.

4. AGGRIEVED PERSONS CONCERN

The request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(b), on the basis that the proposed post-mining land use is not consistent with local land use plans.

The request for review provides a general statement supporting a denial under NR 135.22. The statement reads:

“The permit for Howard Township Properties Nonmetallic Mine Reclamation Plan should be denied because NR 135 states, the proposed post-mining land use shall be consistent with local land use plans.”

COUNTY RESPONSE

NR 135.22(1)(b) provides the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit. NR 135.22(1)(b) reads as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Wis. Stats.”

NR 135.19(3)(a) requires that the reclamation plan specifies a proposed post-mining land use for the mine site. NR 135.19(3)(a) reads as follows:

“NR 135.19(3) POST-MINING LAND USE.

(a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with any applicable state, local or federal laws in effect at the time the plan is submitted.”

The County has reviewed the Town of Howard Comprehensive Plan and the Chippewa County Comprehensive Plan.

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(b) have not been met.

The facts considered and rational for this finding are as follows:

- A. The Town of Howard’s Comprehensive Plan recognizes the physical limitations of reclaimed lands, including the capacity of mine soils to attenuate groundwater contaminants and to and sustain agricultural crop production.

Section 5.2.(5) of the Town of Howard Comprehensive Plan, “Agriculture, Natural Resources, and Cultural Resources; Natural Resources; Groundwater”, cites concerns associated with nonmetallic mining reclamation and groundwater contamination. It states:
“...Grazing land or reforestation may be the only suitable agricultural use of the reclaimed land after termination of the mining operation...”

- B. The Chippewa County Comprehensive Plan recognizes the physical limitations of reclaimed lands, including the capacity of mine soils to attenuate groundwater contaminants and to and sustain agricultural crop production.

Section 6.4 of the Chippewa County Comprehensive Plan, “Agricultural, Natural, and Cultural Resources Element; Goals, Objectives and Policies; Agriculture Resource Goals”, states:

“...Goal 4 - Restore the condition, environmental functions, and productive capacity of abandoned or degraded lands.”

“Objective:

- 1) Reclaim and revegetate abandoned farmland, surface mined lands, and brownfields to:
 - a) Produce biomass for energy production.
 - b) Reestablish native plant communities through planting or natural progression.”

- C. Section “3.0 of the reclamation plan, “Post Mining Land Use” states:

“...Cells excavated for sand will be reclaimed as gently rolling landscapes with native prairie habitats and areas of woodlands...”

- D. The post-mining land use of “native prairie habitats and areas of woodlands” as established in the reclamation plan, is consistent with section 5.2.(5) of the Town of Howard Comprehensive Plan for the purposes of limiting the potential for groundwater contamination.

- E. The post-mining land use of “native prairie habitats and areas of woodlands” as established in the reclamation plan is consistent with the land use and natural resource management objectives of the Chippewa County Comprehensive Plan.

- F. Section 3.1(2) of the Town of Howard Comprehensive Plan, “Transportation; Existing Conditions: Roadways, Railroads, Bridges; Railways”, states:

“There is no rail stop or loading facility within the town at this time. Yet the railroad represents a great asset to the town. As fuel costs keep rising, less expensive rail transportation cannot be overlooked.”

- G. Section 3.0 of the reclamation plan, “Post Mining Land Use” states:
“...The processing facilities will be repurposed for continued commercial use...”
- H. The Operator has proposed to reclaim the area developed for the mine processing facilities to a commercial post-mining land use that utilizes the planned rail transload facilities.
- I. The reclamation of this developed area to a commercial post-mining land use utilizing the planned rail transload facilities is consistent with the goals, objectives, and policies in Section 3.1.(2) of the Town of Howard Comprehensive Plan.
- J. The post-mining land uses proposed in the reclamation plan are consistent with the Town of Howard Comprehensive Plan and the Chippewa County Comprehensive Plan.

5. AGGRIEVED PERSONS CONCERN

The request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(b), on the basis that the proposed post-mining land use is not consistent with local land use plans.

The request for review provides a general statement supporting a denial under NR 135.22. The statement reads:

“The permit for Howard Township Properties Nonmetallic Mine Reclamation Plan should be denied because State law Sec.66.1001. Wis. Stats. requires that local land use-related decisions be consistent with the goals and objectives of that community’s comprehensive plan.”

COUNTY RESPONSE

NR 135.22(1)(b) provides the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit. NR 135.22(1)(b) reads as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Wis. Stats.”

Ch. 66. 1001(2m) Wis. Stats. provides the effect of enacting a comprehensive plan.

Ch. 66.1001(2m) reads as follows:

“66.1001(2m) EFFECT OF ENACTMENT OF A COMPREHENSIVE PLAN.

The enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation.”

The County has reviewed the Town of Howard Comprehensive Plan.

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(a) have not been met.

The facts considered and rational for this finding are as follows:

- A. Goal 1 under Section 8.7 of the Town of Howard Comprehensive Plan, “Land Use; Land Use Goals, objectives, suggested policies”, states:

“...Adopt a Town Zoning Ordinance:

The ordinance should include farmland preservation zones which will have the following effects:

Residential development within an exclusive ag zone is limited to one dwelling on no more than a five acre lot per 40 acres. On a parcel of 200 acres for example, five dwellings would be allowed and they should be clustered in order to maximize the remaining acreage as productive farm land. If possible, clustering would involve lot sizes of less than five acres each. (Note: Farmers are only eligible to receive the tax benefits for farmland preservation programs in farmland preservation zones or in specialized farmland free-enterprise zones.)...”

- B. The Town of Howard has not enacted a town zoning ordinance that makes the Comprehensive Plan a regulation.
- C. The post-mining land uses proposed in the reclamation plan do not need to be consistent with the Town of Howard Comprehensive Plan because a zoning ordinance has not been enacted.

6. AGGRIEVED PERSONS CONCERN

The request for review of the decision to grant a non-metallic mining reclamation permit has been filed under NR 135.22(1)(b), on the basis that the proposed post-mining land use is not consistent with local land use plans.

The request for review provides a general statement supporting a denial under NR 135.22. The statement reads:

“Per NR 135.22 Denial of application for reclamation permit, “An application to issue a nonmetallic mining reclamation permit shall be denied if (b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Stats.

Since the post mining land use of agricultural cropland and deciduous forested hillsides cannot be reclaimed once the hills and agricultural land have been removed to the extent proposed by Northern, a nonmetallic mining reclamation permit should be denied.”

COUNTY RESPONSE

NR 135.22(1)(b) provides the circumstances that must be met to support a finding by the regulatory authority to deny the non-metallic mining reclamation permit. NR 135.22(1)(b) reads as follows:

“NR 135.22 Denial of application for reclamation permit.

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Wis. Stats.”

The County has reviewed the permit application, the reclamation plan, the public hearing record, and the permit conditions issued under Permit #2015-01, and has evaluated this information to determine if it meets the requirements of NR 135 and the Chippewa County Non-Metallic Mining Reclamation Ordinance.

Based upon this review and evaluation, the County finds that the standards for permit denial under Sec. 30-106 of the Chippewa County Code of Ordinances and NR 135.22(1)(a) have not been met.

The facts considered and rational for this finding are as follows:

- A. Section 3.0 of the reclamation plan proposes to reclaim areas of the mine disturbed by mining to a post-mining land use of native prairie wildlife habitat with areas of woodlands.
- B. Section 3.0 of the reclamation plan proposes to reclaim the processing facilities to a commercial post-mining land use that utilizes the rail transload facilities.

- C. No evidence has been presented that shows that proposed nonmetallic mine site cannot be reclaimed in compliance with the reclamation standards contained in Subchapter II of NR 135 (NR 135.05 through NR 138.18).

Seth Ebel

From: johnne smalley <johnnes@hotmail.com>
Sent: Tuesday, January 19, 2016 9:13 PM
To: Dan Masterpole; Seth Ebel
Subject: Request for review of determination

Follow Up Flag: Follow up
Flag Status: Flagged

Documentation and information supporting my grounds for review:

1) The Chippewa County Code of Ordinances Chapter 30, Sec. 106 lines 741-744 states:

“Sec. 30-106. Permit denial. An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Wis. Admin. Code NR § 135.22 exist.

Per NR 135.22 Denial of application for reclamation permit, “An application to issue a nonmetallic mining reclamation permit shall be denied if

(c) 1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.”

Northern Sands, LLC has more than 20 DNR violations of inappropriate exploratory borehole abandonments in Chippewa County. Leaving holes open can create a direct conduit for entry of contaminants to waters of the state and is a serious violation of ch. 281, Wisconsin Statutes and ch. NR812, Wis. Adm. Code.

- a. This was not just one borehole that was inadvertently missed. More than 20 boreholes were found to be abandoned improperly (little or no attempted filling of boreholes) in Howard Township. 25 have been found and properly abandoned as of present (at least one other open borehole was located by someone during the hunting season 2015, but it not known if these have been officially reported at present time.) Each open drillhole is considered a separate violation, so more than 20 shows a pattern of serious violations.
- b. This was also not a case of not knowing about the proper abandonment procedures. Paul van Eijl knew the regulations. He stated more than once at Howard Township Town Meeting that he had followed all DNR regulations in abandoning the boreholes. Many attendees as well as the town board supervisors at the time can attest to that. He also reported following proper abandonment procedures to the DNR.
- c. Stacy Stanky, DNR, can verify these violations, that Northern Sands/Paul van Eijl was issued NOV (Notice of Violation) for them, and that these violations are serious violations. She has submitted her evidence to the Department of Justice for determination of forfeiture for the offenses. Forfeiture may not be just monetary. It may include suspension of current and future permits.
- d. Bradley Motl is one of the Department of Justice’s attorneys who is assigned to the case against Paul van Eijl/Northern Sands. Although none of the information is public at this time (it is an open case at present), he can confirm that this case has been turned over to the Department of Justice and they are presently working on it. We had been given a tentative date in mid-January for resolution, but this has not happened yet.

2) Per NR 135.22 Denial of application for reclamation permit, “An application to issue a nonmetallic mining reclamation permit shall be denied if

(a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by this chapter or the applicable reclamation ordinance to the regulatory authority.”

Northern Sands has failed to provide an adequate reclamation plan, even after being given the opportunity to make corrections. The Addendum prepared for Red Flint (the site manager) addresses a number of areas, but many things are left to be submitted by a future date when there is no chance of a public hearing. Many remedies are to be worked out at a future time without a public hearing. Other things are contradictory, vague, unclear, or not addressed.

The following are examples:

In the Reclamation Cost Estimates of the Reclamation Plan, Erosion Control Monitoring is not factored in until Years 4-10, at which point it is to be done once/year. In the Erosion Control Section of the Reclamation Plan Addendum, “erosion controls will be inspected quarterly and within 24 hours of precipitation events \geq .5 inches.”

Section 3.1 of the Addendum specifies that a qualified contractor with at least 5 years experience in native seeding, native tree installation and landscape operations and with a full-time supervisor on the Project site who will be thoroughly familiar with the type and operation of equipment being used when seeding is in progress. This clarifies who is going to be managing the vegetative reclamation. However, the cost of this management is not added to the “detailed descriptions” of the reclamation cost estimates referred to in Section 3.8 of the Reclamation Plan. There are other costs that have not been added which would go along with inadequate financial assurance.

In the Reclamation of the Wash Plant and Transload Area section of the Addendum, it says, “If the Sand Processing and Transload Facilities are closed and not re-purposed for commercial use for 60 consecutive months after all mining and reclamation has been completed, the associated infrastructure will be removed from the site. This area would then be reclaimed”? It seems that this area would not have to be reclaimed until after all reclamation has been completed including this area. This is very unclear, and probably not legally enforceable as written.

The estimated life of the mine given in the application is 30 years. The leases are for 20 years (commencement date of 12/31/2014) with up to two 10 year extensions. Mining is not scheduled to actually start until 2017 or 2018 at the earliest. With Intermittent mining and reclamation (especially of the conveyor system and Wash Plant), the leases will not cover all of the time necessary for reclamation—even if there are no glitches in the reclamation process.

“Potential wetlands will be avoided during mining; if wetlands cannot be avoided Northern will work with state and federal agencies to obtain appropriate permits for allowed wetland disturbances.” Who decides if wetlands cannot be avoided? If it is Northern, this statement is meaningless. Northern does not have a good track record for working with appropriate agencies or at following their regulations. There is no mention of a public hearing to learn of any possible wetland destruction or have a voice in the remedy.

“Mining will be accomplished to the extent practical using earthmoving equipment such as excavators, dozers, front end loaders, conveyors and trucks. Machinery will utilize white noise back-

up alarms. In general, conventional excavation will be used to facilitate the extraction of sandstone; however, blasting may be used in the mining process.

Blasting, if required," Who decides what "to the extent practical means"? Who decides when blasting is required? All of the large equipment dealers have assured us that their equipment can handle the excavation of the types of soil and rock where silica sand is located in this area, and blasting is not necessary. There needs to be written standards for when percussive methods are and aren't necessary.

"Houses, outbuildings, and farm buildings located on the proposed mine site will be isolated from mining activities and are generally within the buffer area." What does "generally" mean exactly? "What does "isolated" mean?

These kinds of statements make the reclamation plan incomplete, vague, and unclear.

"Erosion control BMPs will be inspected weekly and within 24 hours after rainfall events of one-half inch or greater until the drainage area has been either temporarily or permanently reclaimed." Who inspects? Northern does not have a good track record for accurate reporting. Taxpayers should not have to carry the cost for all of the extra cost for local or state staff to do this inspecting (even if they have adequately trained staff to do this). Independent inspectors approved by the county should be hired with the cost going to Northern.

Section 5.0 of the Addendum states "The long-term management program is critical for maintaining the value of the investment, perpetuating the plant community, and maximizing the ecological and aesthetic benefits of the native plant communities. Management tasks within particular management unit will be guided by the individual landowners."

Red Flint is correct in this statement. Long term management is critical. There needs to be a management prescription that is specific for each unit, though. Reseeding, weed control needed, grading/predation issues, and other needs should be specified in this plan to ensure the individual landowners understand their responsibilities once Northern has completed their part of the reclamation. This needs to be in writing so that the landowners understand this before they sign the certification. Things have been explained very differently to the landowners who signed leases.

Surety Bonds are not adequate forms of financial assurance for reclamation. In researching the problems associated with Reclamation Surety Bonds, I have found:

- a. Most reliable Surety Bond companies do not do surety bonds for reclamation. The nature of what surety bonds do and what reclamation is make them incompatible. A Surety bond is for a set period of time, while reclamation will not be completed until some unknown date in the future.
- b. The companies that do provide Surety Bonds for reclamation are often not reliable. Past history has shown that they will provide a bond for a set period of time both initially and with each renewal, but refuse renewal when actual reclamation is near at which time they may disappear, dissolve, or declare bankruptcy.
- c. The Bureau of Land Management no longer considers Surety Bonds an adequate source of financial assurance for reclamation of mines permitted by them.
- d. Most Surety Bonds are for inadequate amounts. They only consider the cost of reclamation if everything goes well. They do not cover the cost of any reclamation failure. Reclamation failures have in the past bankrupted many companies providing the bond. This is one of the major reasons why many local, state and federal governments no longer consider surety bonds an adequate form of financial assurance

for reclamation. The reclamation cost estimates given in this reclamation plan don't even include erosion control monitoring until years 4-10 and then only a once a year monitoring is included in the estimate, while the plan itself states "erosion controls will be inspected quarterly and within 24 hours of precipitation events \geq .5 inches."

I will attach or give website information to different documentation describing the problems with reclamation surety bonds from state regulators', surety bond industry's, mining association, and lawyers' points of view. A few key points, I will list below.

According to David Ganje of Ganje Law Offices in Rapid City (practicing in the area of natural resources, environmental and commercial law) in <http://www.lexenergy.net/south-dakotas-first-in-situ-leach-uranium-mining-project/>

"My concern with any large natural resource project is the risk of socializing the expense of any possible environmental cleanup as a cost paid by the taxpayer. "Superfund" is a federal environmental law under which the government supervises cleanup of contaminated mining and industrial sites. The polluter is financially responsible for the cleanup. However about 30 percent of Superfund sites are orphaned sites where no responsible party is available to pay for cleanup. Without adequate financial assurance terms in place by a mine operator to pay for a possible cleanup, the taxpayer may have to step in to pay.

A mine operator's financial capacity comes into play in the matter of abandoned mines, orphaned mines, spills, costs of water reclamation, decontamination and closure or decommissioning of a mine. Many mine operators address financial assurance requirement by using surety bonds. A surety bond is an insurance company's guarantee of an applicant's performance under a permit. An applicant must prove adequate financial resources for reclamation, spills and final closure. Nevertheless several mining operations in the US have been closed with unresolved environmental and groundwater issues exceeding the costs of the financial assurances posted for the operation."

According to Kellan McLemore, Staff Attorney, Midwest Environmental Advocates, "There is already a history in Wisconsin of mining companies bailing on their reclamation commitments prior to completion of reclamation."

According to "Mine Reclamation Bonding – from Dilemma to Crisis to Reinvention: What's a State Regulator to Do?" Presented by Gregory E. Conrad Executive Director Interstate Mining Compact Commission Before the Energy and Mineral Law Foundation Winter Workshop on Energy Law February 11, 2014 <http://www.imcc.isa.us/EMLF%20Bonding%20Presentation%20Final.pdf>

"traditional surety bonds, or similar instruments, were never designed for long-term reclamation obligations like water treatment but instead were focused on shorter term and very defined obligations that had a high certainty for eventual release following the completion of reclamation (generally based on success of revegetation of the site). Ordinarily, bonding underwriters will not provide a surety bond if it is determined that a site will have long-term pollutional discharges since the bond will likely never be released – an outcome that a bonding company will do its best to avoid. This is largely because reclamation bonds, unlike insurance, are intended to function primarily as credit transactions or accommodations in which the surety anticipates no loss."

And

"Over the course of the past 35 years since the enactment of the Surface Mining Control and Reclamation Act of 1977 (SMCRA)², bonding (or financial assurance)³ programs related to the reclamation of coal mining operations have undergone a series of adjustments that reflect the changing nature of both the coal and surety industries. Some changes have involved small refinements; others represent new, innovative approaches that were not on anyone's radar screen in the early days of SMCRA's implementation. In many respects, the bonding program under SMCRA has served as a microcosm of the larger financial and economic challenges faced by the country as a

whole, beginning with the “bonding dilemma” of the mid-90’s when bankrupt surety companies and under-funded bond pools caused great concern, to the “bonding crisis” of the early 2000’s as the surety and insurance industries responded to the significant losses associated with 9/11 and catastrophic weather events, to the “bonding challenges” that we face today as a result of corporate restructuring and unanticipated environmental conditions and priorities, especially related to water quality and long-term treatment scenarios. ... There are a variety of other issues that the states are currently working through in the bonding arena and many of these were discussed at three recent workshops that IMCC hosted for state regulatory authorities. Beyond those mentioned above, states are also focused on bond forfeitures, especially those associated with bankruptcies and the potential for alternative enforcement; tracking letters of credit as a result of bank mergers and closures; difficulties associated with updating and increasing bond amounts; the expense associated with full cost bonding; insufficient funds following bond forfeitures; and the increasing complexity of administering a bonding program, especially with regard to risk analysis.”

Gregory Conrad states, “Representing as I do the states that regulate the mining industry, my views are admittedly from the perspective of a state government agency, whose primary interest is to ensure that the state will have sufficient funds to complete the reclamation should the operator default and to thereby protect the citizens and taxpayers of the state from being saddled with unfunded liabilities. It is this same interest that has motivated several federal government agencies to develop or propose robust financial assurance programs where mineral extraction is concerned, including the Bureau of Land Management⁹, the U.S. Forest Service and the U.S. Environmental Protection Agency.”

According to RECLAMATION BONDS FROM THE SURETY PERSPECTIVE Presented By William T. Gorton III, Esq., https://www.bestlawyers.com/Downloads/Articles/2267_1.pdf

“The negotiations with the regulatory agencies, surface and mineral owners and other interested parties can create a very complicated scenario that requires an understanding of the law regarding environmental protection, bankruptcy and suretyship, along with technical expertise in land reclamation. Though presented in the context of the coal industry, the principles discussed below are generally applicable to the mining industry as a whole. ... Until the recent surge in coal prices, numerous companies with large coal mine environmental obligations have been dissolved or become bankrupt in the last ten years including most recently, Horizon Natural Resources, Lodestar Energy, LTV Steel, Bethlehem Steel, AEI Resources, Quaker Coal, Pen Holdings, Anker Energy and others. In such an event, notwithstanding a potential successful reorganization, coal operations that have stopped in mid-operation become “problem mines,” and may be subject to bond forfeiture for various reasons. Under SMCRA, the regulatory agency must notify the permittee and surety of its intent to forfeit the bonds and advise of conditions under which forfeiture may be avoided. **By this time, however, it is usually very late in the game for the surety to be able to have significant influence over its bonded principal.**” ... Many of the most complicated matters facing the regulatory agencies and sureties have involved the large company bankruptcies or dissolutions with numerous sites involving all aspects of mining. ... The surety is not the permittee and is not subject to permitting requirements as is an operator. Many of the larger cases are also subject to U.S. Bankruptcy Court jurisdiction therefore the surety, permittee and agencies must deal with a Trustee or Debtor in Possession and other creditors. Most real legal conflicts occur here due to the intersection of environmental law, surety law and bankruptcy law. There are inherent competing interests: Goals of bankruptcy law: return funds to creditors.

According to <http://corporate.findlaw.com/business-operations/mining-and-the-vanishing-surety-bond-market.html>

Financial Distress in the Surety Industry

“In the congressional hearings during the summer of 2002, the president of the Surety Association of America (SAA), Lynn Schubert, testified that a report released by SAA in May 2002 provides

evidence of the potentially devastating conditions facing the surety bond industry.... These problems have been accompanied by a shrinking supply of surety companies due to mergers, bankruptcies, and unilateral decisions by surety providers to leave the business. According to one source, the availability of surety is constrained due to the presence of fewer surety companies than in the past. Reportedly, five of the twelve largest surety providers were acquired or exited the business between 1998 and 2001. The impacts of the recent events on surety providers similarly have affected the reinsurance market. In order to limit financial exposure, surety companies historically have entered into agreements with reinsurance providers. For example, a surety company may contractually agree to be liable for a percentage or predetermined amount of the bond liability with any additional amounts covered by the reinsurer. If the bond is forfeited, the reinsurer is typically liable for the agreed upon dollar amount to the surety provider and not to the beneficiary of the bond. ... the unique circumstances related to the extractive industry have curtailed dramatically the availability of sureties for mining companies now as compared to the 1990s. In particular, the mining industry's ability to obtain financial guarantees is directly affected by the duration of the surety commitment, the downturn in the market for minerals, recent regulatory changes, and the changing surety industry. First, in contrast to most nonmining projects, the obligations related to mining reclamation often are of indefinite duration and can extend for decades or longer. Regulators increasingly have responded to this long-term exposure to risk by a wariness to release any portion of a surety as reclamation is performed. Delay in bond release provides further evidence to surety companies that the duration of risk is highly uncertain, and thus makes them less willing to provide new or increased surety to the mining industry.”

<http://faculty.lawrence.edu/gerardd/wp-content/uploads/sites/9/2014/02/22-RP-Gerard-bonding.pdf>

Abstract:

It is becoming a standard practice for governments to require mining operations to post reclamation bonds. Yet, there have been few theoretical treatments examining the rationale for bonding mechanisms, and even fewer empirical treatments of the effectiveness of bonding. This paper addresses some of these holes in the literature. It begins by examining the rationale underlying reclamation bonds, and discusses the strengths and weaknesses of bonding as a tool for enforcing reclamation requirements. The role of bonding mechanisms is to help enforce standards, not necessarily yield efficient outcomes, and these mechanisms are best viewed as a complement to — not a substitute for — liability rules. The paper also examines the effectiveness of bonding by drawing on evidence from hardrock mining on public lands in the western United States. ∆ 2001 Elsevier Science Ltd. All rights reserved.

Problems with bonding mechanisms.

There are several problems associated with bonding mechanisms that limit their applicability (Shogren et al., 1993). First and foremost, bonding is not free — the firm, the regulator, and the surety each incur transaction costs. These transaction costs increase as uncertainty increases or as contracting becomes more complex, as complex contracts are costly to write, interpret, and enforce. For instance, a contract that specifies that “reasonable efforts must be taken to reclaim the site” would be likely to be much more difficult to enforce than one that specified bright-line rules for reclaiming drill holes, roads, processing facilities, and the like. As contracting becomes more costly, the effectiveness of the bonding mechanism decreases. Uncertainty is also a primary impediment to the smooth operations of liability rules. Therefore, it is unlikely that the bonding mechanism will be an effective substitute for liability rules. A second problem is that bonds can impose liquidity constraints on firms. Cash, treasury bonds, certificates of deposit, and other liquid assets are often acceptable forms of collateral, but these instruments can tie up a firm’s operating capital. This liquidity constraint becomes more binding as the deposit amount increases. One way to mitigate the liquidity constraint is by involving a third party, for instance, a surety. For a fee, a surety agrees to cover the amount of the bond if the agent fails to fulfill its obligation, which also transfers a portion of the default risk from

the public to the surety provider (there is not necessarily a transfer of funds that the landowner holds in trust; instead, the surety assumes a legal obligation to provide funds if the firm reneges on its agreement). The use of a surety reduces, but does not eliminate, liquidity constraints. The firm must pay an annual premium, and the bond amount is also a liability on the firm's balance sheet that adversely affects the firm's credit. Although collateral reduces the firm's moral hazard, it also introduces moral hazard on the side of the regulator. A wealth-maximizing regulator may have the incentive to retain the bond whether or not reclamation is performed. This is a potentially serious defect of the bonding mechanism. If, however, the operating permit specifies reclamation requirements that can be verified by a third-party at a low cost, the firm should be able to successfully challenge the regulator's decision. Moreover, it would be difficult for a state with a poor reputation to attract capital to its jurisdiction, and surety providers would be less likely to underwrite contracts for operations within that state.

Based on past history of mining reclamation and the problems state and federal agencies have reported with surety bonds, I question whether Chippewa County has the staff resources to conduct adequate review of financial assurance issues? NRC (Nuclear Regulatory Commission) officials told us that their staff resources are limited and that they lack the financial expertise to evaluate compliance with investment restrictions. . . The federal watchdog agency General Accountability Office (GAO) expressed concern over the BLM and NRC's ability to determine the costs of reclamation. At the very least, I would like to suggest that Chippewa County follows the advice of David Ganje of Ganje Law Offices in Rapid City (practicing in the area of natural resources, environmental and commercial law).

Whether the financial assurance is in the form of a surety bond, escrow account or any other form, the agency with designated authority over an applicant's financial assurance requirements shall evaluate in writing all financial assurance documentation using an agency-designated non-party (Consultant) with recognized experience in the areas of financial assurance. This designation shall be a condition of any permit or license. The costs incurred by the agency in contracting with the Consultant shall be paid by the applicant.

3) The permit for Howard Township Properties Nonmetallic Mine Reclamation Plan should be denied because NR 135 states, "The proposed post-mining land use shall be consistent with local land use plans."

and

4) The permit for Howard Township Properties Nonmetallic Mine Reclamation Plan should be denied because State law Sec.66.1001. Wis. Stats. requires that local land use-related decisions be consistent with the goals and objectives of that community's comprehensive plan.

I have stated several times that the proposed post-mining land use given in 3.0 of the Howard Township Properties Nonmetallic Mine Reclamation Plan is not consistent with local land use plans given in the Howard Township Comprehensive Plan. It is also not consistent with the Agricultural Resource Goals of the Chippewa County Comprehensive Plan. Page 173, Section 6.4 states:

Goal 1 - Maintain the physical condition, biodiversity, ecology, and environmental functions of the landscape, including its capacity for flood storage, groundwater recharge, water filtration, plant growth, ecological diversity, wildlife habitat, and carbon sequestration.

Goal 2 - Maintain the capacity of the land to support productive forests and agricultural working lands to sustain food, fiber, and renewable energy production.

I don't know which local land use plans or goals actually rules (I have been told by at least one lawyer that usually the township trumps the county and the county trumps the state), but since both Howard Township and Chippewa County have similar goals set for agriculture and forest land, and the

Howard Township Properties Nonmetallic Mine Reclamation Plan is inconsistent with these goals, the permit should be denied.

5) Per NR 135.22 Denial of application for reclamation permit, "An application to issue a nonmetallic mining reclamation permit shall be denied if

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Stats.

Since the post mining land use of agricultural cropland and deciduous forested hillsides cannot be reclaimed once the hills and agricultural land have been removed to the extent proposed by Northern, a nonmetallic mining reclamation permit should be denied.

Sincerely,
Johnne Smalley