

Cliff Notes Guide to Documents

This is a cliff notes type guide to the frack sand agencies and regulations documents. This will give you a quick overview of the most important aspects of those findings, and provide a context for all the documents.

It has been put forward that Mining is the most regulated industry in the US. Is it? We have contacted all the regulating agencies to see what regulations and permits are required to mine frack sand. And, what the extent of any actual oversight is. In that endeavor we have found many areas of mining that are not regulated by any agency or entity.

The Mines and Minerals Bureau of IDALS, the Iowa Department of Agriculture and Land Stewardship, regulates mining in Iowa. But, their function seems to be clerical in nature. They license, register, and require a bond. They visit mines to inspect for closing requirements, or if there is a complaint. They do not specify how to mine.

MSHA, the Mine Safety & Health Administration's Fort Dodge office covers Iowa and bottom third of Minnesota. They are the OSHA of the mining industry. They are responsible for mine workers safety and health on mine property only. Any testing and oversight is done on the day of the visit. They visit a surface mine two days a year, and an underground mine four days a year. So, there is no MSHA oversight 363 or 361 days a year. MSHA does not regulate actual mining operations.

The Iowa DNR regulates only off site environmental issues. It has nothing to do with the regulation, or existence, of the actual mining operations themselves. It relies on citizen complaints for much of its oversight because of a lack of funding. Everyday people are supposed to know all of the issues surrounding environmental pollution and they are to inform the DNR there is a problem.

The State Fire Marshal licenses anyone who is allowed to possess explosives, as well as the storage magazines. There is no onsite oversight. They only go on site if there are noise complaints or fly rock complaints. They have the authority but lack the resources.

Vehicle Enforcement (Blue Cars): Does not regulate in the normal sense. Can stop vehicles to check for weight and vehicle safety. Do not regulate where or when trucks go, or how many trucks travel a certain road.

In the Zoning Code Section, many of the different issues listed refer to the same zoning code section. The three water sections are basically the same and so are really one issue. The Reclamation Section is an IDALS function.

Increased truck traffic; 505.1(1), 505.1(7), 505.2; the use will not create an excessive burden on existing infrastructure systems including...highway and roads and other public facilities and utilities which serve or are proposed to service the area; the use will not cause traffic hazard or congestion; the commission may, in addition to requirements

specified...recommend additional conditions necessary to protect the best interest of area or county in whole (paraphrased).

[This gets to two general issues that will keep coming up as the sections are discussed. First, this is basically self-regulation. The company says we'll need so many trucks per day/week/month to do this job. The Board then says, okay, we'll put that in the Conditional Use Permit. The zoning language is not really regulatory in nature, it is enabling language. It is written to allow what the industry needs. And, in many cases, it is written by the company asking for asking for the permit; an example, "a plan for dust and noise control (is a requirement of the proposal)."

Second, the P&Z and the Supervisors are citizen boards. Who on the P&Z or the Supervisors has the requisite expertise and knowledge to know how the "health, safety, and general welfare of occupants of surrounding lands" – catch all phrase, section 505.1 – would be affected by increased traffic or any of the other issues considered "externalities" by the mining companies? Or, what that traffic would do to roads and bridges? What is the expertise behind these Conditional Use Permit regulations? I will return to this in section 505.1.]

Dust; 711.2(4); a plan for dust and noise control (is a requirement of the proposal).

[This is self-regulation/enabling language. It is written by the company asking for asking for the permit.]

711.2(4) Iowa Department of Natural Resources regulates air quality. [The DNR does not permit non-point sources of fugitive dust. There are DNR rules about fugitive dust but, because of staffing issues, the DNR depends on neighbors to call in complaints to know about these issues. If the DNR waits for citizen complaints, the pollution events are already ongoing. What is the requisite expertise and knowledge that neighbors must have to know that they may be subject to health problems due to these fugitive dust events? Do citizens know that they are to be the ones regulating industry? Where is the regulation in this?]

Noise; 711.2(4); a plan for dust and noise control (is a requirement of the proposal). [As in the dust section above, this is self-regulation/enabling language. It is written by the company asking for asking for the permit. Who has the expertise and knowledge to know what noise does to particular people? Where is the regulation in this?]

711.3(1)(b); the work being done shall not adversely affect the quality of surface or subsurface water. [This is self-regulation/enabling. The DNR says that given the fact that groundwater levels rise and fall depending on area rainfall, water withdrawal wells and their associated cones of depression, etc, claims that a given mine will remain above groundwater by a certain depth, are probably not possible. If that is so, how does the county or the DNR make sure that adjacent wells and springs are not compromised? As above, the DNR relies on the general public to be cognizant of what is going on, and contact them if a problem exists. Again, if noticed, that means the problem has been ongoing. Where is the regulation here?]

505.4(4); the commission may require a review...by Winneshiek County Dept of Health (environmental). [The Board of Health can be asked to perform an Environmental Impact Statement on all these issues. They should be asked to do this during the 24 month moratorium.]

711.2(7); required information can include “any information requested by the commission or Board. Could include environmental assessment. [Should use the moratorium to conduct an Environmental Impact Statement prior to granting any Conditional Use Permits.]

Property Value; 505.1(2), 505.1(3); the use will be sufficiently compatible or separated by distance or screening from adjacent land so that existing properties will not be depreciated in value and there will be no deterrence to development of vacant land, the site shall have an appearance that will not have an adverse effect upon adjacent residential properties. [The removal of hills, bluffs, forests, and the filling of adjacent valleys with tailings is inconsistent with both the letter and the intent of these sections. Adjacent property values must be affected by an extractive enterprise of this nature. See Minnesota and Wisconsin.]

505.1(5); the use is consistent with the purposes of the zoning district in which the applicant intends to locate the proposed use. [Since we have no wording considering frack sand mining, we should have a moratorium to figure out what that zoning district and language describing that zoning should be.]

Catch All Phrase; 505.1; in granting a conditional use permit, the County Board of Supervisors shall consider the advice and recommendation of the Commission and the affect of the proposed use upon the health, safety, and general welfare of occupants of surrounding lands. [The county should consider and regulate those things that are considered externalities by mining companies; ergo, neighbor’s health; quality of life including noise, lights, and views; water table issues including groundwater, spring, and well contamination; hill and bluff removal; forest removal; the filling of adjacent valleys; roads, bridges and traffic; ability to enjoy your own property; ability to enjoy the environment through tourism and outdoor activities, etc. Both the Board and the Commission are citizen boards. As such, neither has the knowledge or requisite expertise to answer what these wholesale changes will do to neighbors, the neighborhood, and the county as a whole. We should have a moratorium so that we can figure out how we are going to handle this issue. We should ask the Board of Health to conduct an Environmental Impact Statement on all of these issues.]

We have seen a number of agencies that are involved in the arena of frack sand mining, but there is no agency that actually regulates frack sand mining. The industry statement on this is: “As long as companies that are in this industry utilize proper planning and engineering and design parameters, these are environmentally safe practices.” Essentially they are saying we don’t need to worry. But, there are those issues that the industry considers externalities and which we have mentioned that we might want to worry about.

Neither the State of Iowa nor the EPA, or the other agencies we have contacted describes how and where frack sand mining can be done. Mining companies do that. In

that sense, mining companies self regulate. And a county Conditional Use Permit becomes not regulatory language, but instead enabling language.

There is no one overall agency involved in making sure that all agencies are involved in a mine's oversight and regulation. In fact, the MSHA Regional Director, Troy VanWey, said they are not even sure where all the mines and quarries may be. Some mines and quarries operate without permits or licenses.

DNR has oversight only off the mine property for environmental issues. And, because of a lack of resources, depends on neighbor complaints to know if a problem exists. That means a neighbor must know what a pollution event is, that they can report it, and then report it. In this scenario, the pollution event is already taking place. It is regulation after the fact, not regulation in order to prevent a pollution event.

As you can see, because of the myriad agencies with patchwork jurisdictions, mining is not really regulated in the sense that one would consider. There is no overall regulation of a mine when it opens, or even where, or if, it will open. A mining company controls the way it mines and how surface and subsurface disturbance happens.

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