From:	Bobby King
To:	*EQB_Silica Sand
Subject:	Land Stewardship Project Comments on draft EQB document, "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects."
Date:	Monday, January 27, 2014 4:02:35 PM

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Will Seuffert, Executive Director
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Jan. 27, 2014

RE: Land Stewardship Project Comments on draft EQB document, "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects."

Dear Mr. Seuffert,

We want to restate our strong support for the policy that Governor Mark Dayton has laid out for the frac sand industry of a ban in southeast Minnesota's fragile karst area and strong standards for the rest of the state. The current draft of "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Projects" does not reflect this position and we believe that it should. Most notably, missing entirely from the document is how local governments can ban frac sand mining and processing. This key omission is despite the fact that at least two communities have effectively takes such action and others are strongly considering it.

We believe these items need be included in the final guidance document:

1. The guide should include the ability of local government to adopt a moratorium (interim ordinance) to protect the planning process while a comprehensive plan and zoning ordinances are being created or updated. Use of the moratorium power needs to be encouraged. The Land Stewardship Project has a manual for townships on how to adopt an interim ordinance and it should be included as a reference: "Protecting your Township from Unwanted Development: A guide for Minnesota townships on using an interim ordinance to promote responsible development."

2. There is no clear explanation of the ability of local government to ban the frac sand industry in portions or all of a municipality if the community concludes it is an incompatible use. A section of the document needs to be devoted to this issue. The EQB should recommend that frac sand mines, processing plants and loading and transfer facilities be prohibited from areas zoned for residential and agricultural use, and possibly others. Some local governments have determined that the frac sand industry is completely incompatible with the municipality and chosen to ban it altogether. As long as the local government concludes that the nature of the industry is incompatible with the vision of the community as outlined in its comprehensive plan, then this is clearly within its power. Frac sand mining can be distinguished from the typical aggregate and gravel mining activity through several means, including intensity of the activity (blasting; truck traffic; year-round, daily operation, etc.) and the production of industrial silica. The frac sand industry's claim that it is indistinguishable from the many existing gravel and aggregate mines is a ruse designed to confuse local decision makers and planners. This guide needs to clarify this issue.

3. The title of this document, "Tools to Assist Local Governments in Planning for and Regulating Silica Sand Project," suggests that local governments will necessarily be allowing the frac sand industry to operate in their community and their only role will be to put limits on where and how. This is not the case. Some communities have chosen to ban elements of frac sand mining like processing and others have banned the industry altogether. We would propose the title: "Tools to Assist Local Government in Responding to Silica Sand Projects."

4. The document needs to include the many violations of state and local laws in both Minnesota and Wisconsin that the frac sand industry is responsible for. Many of the violations in Wisconsin were committed by Minnesota-based companies that will likely seek to expand in Minnesota. In developing local regulations, local decision makers and citizens need to be made fully aware that this is an industry that has a track record of disregarding state and local laws.

5. The document needs to include as guidance the restrictions which the Department of Natural Resources

(DNR) has very publicly made clear are necessary to protect trout streams in southeast Minnesota's Driftless Area. These are:

- Ban on mining within one mile of all designated trout streams, class 2A waters, perennial tributaries of designated trout streams and Class 2A waters, and springs, especially those feeding designate trout streams and tributaries.
- Prohibiting mining within 25 feet of the water table, and
- Capping groundwater use at 1 million gallons per year, per operation for frac sand mining and/or processing

If the EQB cannot reaffirm what the DNR has clearly stated is necessary on several public occasions and on the public record, then it calls into question the integrity of this entire effort.

6. In the reference section, the only link to local ordinances is to the Winona County ordinance. This is puzzling, as the Winona ordinance is among the least protective of any of the county ordinances. This gives the impression of a lack of familiarity with the many local ordinances that have been passed and the online resources related to ordinances that have been created. Among others, there needs to be a link to these resources:

- The city of Red Wing has a well-developed ordinance and detailed background information on the issue here: Red Wing Silica Sand Mining Moratorium.
- The Goodhue County ordinances and background information are compiled here: http://www.co.goodhue.mn.us/countygovernment/committees/MiningCommittee/Miningcomm.aspx .
- Florence Township has a comprehensive plan and zoning ordinance that bans the frac sand industry from that township. The township has an excellent website with information on how it did this. Florence Township's website and ordinance need to be referenced for communities seeking to ban the industry: http://www.florencetwp.org/.
- Pepin County, Wis., has a page on the issue—Frac Sand Mining in Pepin County—that has much useful information. In addition, Pepin County's approach to the issue of a protective overlay district and aggressive road use agreements needs to be covered thoroughly in this document.
- Save the Bluffs has compiled many of the studies and the literature available on the subject and it should be included as a reference: https://sites.google.com/site/savethebluffs/.

7. The document urges caution on using setbacks and yet provides no model setbacks. The tone of the setback section should be revised and model setbacks to protect air quality, property values, water quality, etc. should be provided. In addition, this section states, "If restrictions or prohibitions on silica sand projects are what are desired by the LGU for local reasons, other methods such as zoning or ordinance development can more effectively meet their objective." However, the document fails to give meaningful guidance on how to best do this.

We appreciate the extension of the comment period, but even this extended time is not adequate for the public to have time to review a complicated 165-page document and prepare a response. Much of the validity of this document will depend on the pubic having confidence in it. The Land Stewardship Project would like to see a process that allows for comments on an updated draft before it is finalized. This will allow for further public participation.

Sincerely,

Bobby King
State Policy Organizer
Land Stewardship Project