



June 19, 2013

Dear County, Township and City Official:

RE: Minnesota New Law on Silica Sand Operations

The 2013 Minnesota Legislature passed and Governor Mark Dayton signed new legislation to address silica sand mining and processing operations in Minnesota. This legislation directs our state agencies to provide additional technical assistance to local units of government to aid in local regulation and permitting of this industry. New thresholds for environmental review were also established, and new regulations for this industry will be developed. Several state agencies, including the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Natural Resources (DNR), the Minnesota Department of Health (MDH), the Minnesota Department of Transportation (MnDOT), the Minnesota Department of Agriculture and the Environmental Quality Board (EQB) will be involved in implementing this legislation.

We are planning to hold meetings with local officials in Red Wing and Winona on August 2, 2013, to explain the legislation and its impacts on future proposals for silica sand projects. You will receive a notification of the meeting specifics as soon as they are available.

The new legislation, which can be found in Minnesota Session Laws 2013, Chapter 114, contains several new provisions and deadlines. We have included a summary and the full legislative text as an attachment to this letter.

We look forward to receiving your input and participation in implementing this legislation. Please feel free to contact us, or Bob Patton, EQB Executive Director at 651-201-6226 [bob.patton@state.mn.us](mailto:bob.patton@state.mn.us) with your questions or suggestions.

Sincerely,

Dave Frederickson  
EQB Chair and  
MDA Commissioner

Dr. Ed Ehlinger  
MDH Commissioner

John Linc Stine  
MPCA Commissioner

Charles Zelle  
MnDOT Commissioner

Tom Landwehr  
DNR Commissioner

*Please see second page for list of recipients to this letter.*

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## New Silica Sand Legislation Summary – Minnesota Session Laws 2013 Chapter 144

Sec. 106. Effective retroactively to March 1, 2013, a local unit of government may extend an interim ordinance related to silica sand projects for one year, or renew and extend by one year an expired ordinance prohibiting new or expanded silica sand projects.

### Sec. 105. Effective immediately:

The MPCA is directed to adopt rules pertaining to the control of particulate emissions from silica sand projects;

The DNR is directed to adopt rules pertaining to the reclamation of silica sand mines;

The MDH is directed to adopt air quality health-based values for silica sand by January 1, 2014; and

The EQB is directed to amend its rules setting thresholds for environmental review of silica sand mining and processing project proposals.

Rule adoption procedures can take up to 24 months to complete.

Sec. 66. Effective immediately, no excavating or mining of silica sand may occur within one mile of a trout stream in the Paleozoic Plateau Ecological Section (Driftless Area) of southeastern Minnesota without first obtaining a “silica sand mining trout stream setback permit” from DNR. This applies to any project for which environmental review documents have been noticed after April 30, 2013.

Sec. 92. Effective July 1, 2013, and until July 1, 2015, an Environmental Assessment Worksheet (EAW) is required for the following silica sand projects:

- Excavation 20 or more acres of land to a mean depth of ten feet or more during its existence — (local government is the responsible governmental unit);
- 7,500 tons for storage of silica sand or a project with an annual throughput threshold of 200,000 tons of silica sand, unless a MPCA permit is required —MPCA is the responsible government unit.

In addition to contents already required in an EAW, EAWs prepared under this provision must contain:

1. A hydrogeologic investigation
2. A assessment of water availability
3. An air quality impact assessment
4. A traffic impact analysis
5. An assessment of compatibility with existing uses
6. Potential mitigation measures.

The above thresholds for environmental review are considered interim requirements and expire after two years, in anticipation of longer-term environmental review amendments being promulgated by EQB.

Sec. 91. By October 1, 2013, the EQB, in consultation with local units of government, is required to develop model standards and criteria for mining, processing and transporting silica sand that may be used in developing local ordinances. These standards and criteria are required to cover fourteen specific items to help regulate silica sand facilities or operations.

Sec. 91. By October 1, 2013, the EQB is required to assemble a silica sand technical assistance team to provide local government, when requested, with assistance regarding silica sand ordinances, environmental review, permitting, monitoring or operations.

Sec. 93. By October 1, 2013, the EQB is required to, in consultation with local units of government, create and maintain a reference library of local ordinances and permits that have been developed for regulation of silica sand operations.

ARTICLE 4  
ENVIRONMENT AND NATURAL RESOURCES STATUTORY CHANGES

Sec. 66. **[103G.217] DRIFTLESS AREA WATER RESOURCES.**

(a) Groundwater discharge from natural springs and seepage areas in the driftless area of Minnesota, corresponding to the area of the state contained within the boundaries of the Department of Natural Resources Paleozoic Plateau Ecological Section, is vital to sustaining the coldwater aquatic ecosystems in the region, as well as the recreational, commercial, agricultural, environmental, aesthetic, and economic well-being of the region.

(b) Within the boundaries of the Department of Natural Resources Paleozoic Plateau Ecological Section, no excavation or mining of silica sand, including, but not limited to, digging, excavating, mining, drilling, blasting, tunneling, dredging, stripping, or shafting, may occur within one mile of a designated trout stream as listed in Minnesota Rules unless a silica sand mining trout stream setback permit has been issued by the commissioner.

(c) Before issuing a permit under this section, the commissioner shall:

(1) require a project proposer to do a hydrogeological evaluation and collect any other information necessary to assess potential impacts to hydrogeological features, including private and public drinking water supply wells; and

(2) identify appropriate setbacks from designated trout streams, springs, and other hydrogeologic features and any other restrictions necessary to protect trout stream water quantity, quality, and habitat.

(d) The commissioner may assess the project proposer fees to cover the reasonable costs of duties performed under this section.

**EFFECTIVE DATE.** This section is effective the day following final enactment and applies to new silica sand mining projects and projects for which environmental review documents have been noticed for public comments after April 30, 2013.

Sec. 91. **[116C.99] SILICA SAND MINING MODEL STANDARDS AND CRITERIA.**

Subdivision 1. **Definitions.** The definitions in this subdivision apply to sections 116C.99 to 116C.992.

(a) "Local unit of government" means a county, statutory or home rule charter city, or town.

(b) "Mining" means excavating silica sand by any process, including digging, excavating, drilling, blasting, tunneling, dredging, stripping, or by shaft.

(c) "Processing" means washing, cleaning, screening, crushing, filtering, sorting, processing, stockpiling, and storing silica sand, either at the mining site or at any other site.

(d) "Silica sand" means well-rounded, sand-sized grains of quartz (silicon dioxide),

with very little impurities in terms of other minerals. Specifically, the silica sand for the purposes of this section is commercially valuable for use in the hydraulic fracturing of shale to obtain oil and natural gas. Silica sand does not include common rock, stone, aggregate, gravel, sand with a low quartz level, or silica compounds recovered as a by-product of metallic mining.

(e) "Silica sand project" means the excavation and mining and processing of silica sand; the washing, cleaning, screening, crushing, filtering, drying, sorting, stockpiling, and storing of silica sand, either at the mining site or at any other site; the hauling and transporting of silica sand; or a facility for transporting silica sand to destinations by rail, barge, truck, or other means of transportation.

(f) "Temporary storage" means the storage of stock piles of silica sand that have been transported and await further transport.

(g) "Transporting" means hauling and transporting silica sand, by any carrier:

(1) from the mining site to a processing or transfer site; or

(2) from a processing or storage site to a rail, barge, or transfer site for transporting to destinations.

Subd. 2. **Standards and criteria.** (a) By October 1, 2013, the Environmental Quality Board, in consultation with local units of government, shall develop model standards and criteria for mining, processing, and transporting silica sand. These standards and criteria may be used by local units of government in developing local ordinances. The standards and criteria shall be different for different geographic areas of the state. The unique karst conditions and landforms of southeastern Minnesota shall be considered unique when compared with the flat scoured river terraces and uniform hydrology of the Minnesota Valley. The standards and criteria developed shall reflect those differences in varying regions of the state. The standards and criteria must include:

(1) recommendations for setbacks or buffers for mining operation and processing, including:

(i) any residence or residential zoning district boundary;

(ii) any property line or right-of-way line of any existing or proposed street or highway;

(iii) ordinary high water levels of public waters;

(iv) bluffs;

(v) designated trout streams, Class 2A water as designated in the rules of the Pollution Control Agency, or any perennially flowing tributary of a designated trout stream or Class 2A water;

(vi) calcareous fens;

(vii) wellhead protection areas as defined in section 1031.005;

(viii) critical natural habitat acquired by the commissioner of natural resources under section 84.944; and

(ix) a natural resource easement paid wholly or in part by public funds;

(2) standards for hours of operation;

- (3) groundwater and surface water quality and quantity monitoring and mitigation plan requirements, including:
- (i) applicable groundwater and surface water appropriation permit requirements;
  - (ii) well sealing requirements;
  - (iii) annual submission of monitoring well data; and
  - (iv) storm water runoff rate limits not to exceed two-, ten-, and 100-year storm events;
- (4) air monitoring and data submission requirements;
- (5) dust control requirements;
- (6) noise testing and mitigation plan requirements;
- (7) blast monitoring plan requirements;
- (8) lighting requirements;
- (9) inspection requirements;
- (10) containment requirements for silica sand in temporary storage to protect air and water quality;
- (11) containment requirements for chemicals used in processing;
- (12) financial assurance requirements;
- (13) road and bridge impacts and requirements; and
- (14) reclamation plan requirements as required under the rules adopted by the commissioner of natural resources.

Subd. 3. **Silica sand technical assistance team.** By October 1, 2013, the Environmental Quality Board shall assemble a silica sand technical assistance team to provide local units of government, at their request, with assistance with ordinance development, zoning, environmental review and permitting, monitoring, or other issues arising from silica sand mining and processing operations. The technical assistance team may be chosen from representatives of the following entities: the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, the Department of Health, the Department of Transportation, the University of Minnesota, the Minnesota State Colleges and Universities, and federal agencies. A majority of the members must be from a state agency and all members must have expertise in one or more of the following areas: silica sand mining, hydrology, air quality, water quality, land use, or other areas related to silica sand mining.

Subd. 4. **Consideration of technical assistance team recommendations.** (a) When the technical assistance team, at the request of the local unit of government, assembles findings or makes a recommendation related to a proposed silica sand project for the protection of human health and the environment, a local government unit must consider the findings or recommendations of the technical assistance team in its approval or denial of a silica sand project. If the local government unit does not agree with the technical assistance team's findings and recommendations, the detailed reasons for the disagreement must be part of the local government unit's record of decision.

(b) Silica sand project proposers must cooperate in providing local government unit staff, and members of the technical assistance team with information regarding the project.

(c) When a local unit of government requests assistance from the silica sand technical assistance team for environmental review or permitting of a silica sand project the local unit of government may assess the project proposer for reasonable costs of the assistance and use the funds received to reimburse the entity providing that assistance.  
**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 92. **[116C.991] ENVIRONMENTAL REVIEW; SILICA SAND PROJECTS.**

(a) Until two years after the effective date of this section, an environmental assessment worksheet must be prepared for any silica sand project that meets or exceeds the following thresholds, unless the project meets or exceeds the thresholds for an environmental impact statement under rules of the Environmental Quality Board and an environmental impact statement must be prepared:

(1) excavates 20 or more acres of land to a mean depth of ten feet or more during its existence. The local government is the responsible governmental unit; or  
(2) is designed to store or is capable of storing more than 7,500 tons of silica sand or has an annual throughput of more than 200,000 tons of silica sand and is not required to receive a permit from the Pollution Control Agency. The Pollution Control Agency is the responsible governmental unit.

(b) In addition to the contents required under statute and rule, an environmental assessment worksheet completed according to this section must include:

(1) a hydrogeologic investigation assessing potential groundwater and surface water effects and geologic conditions that could create an increased risk of potentially significant effects on groundwater and surface water;  
(2) for a project with the potential to require a groundwater appropriation permit from the commissioner of natural resources, an assessment of the water resources available for appropriation;  
(3) an air quality impact assessment that includes an assessment of the potential effects from airborne particulates and dust;  
(4) a traffic impact analysis, including documentation of existing transportation systems, analysis of the potential effects of the project on transportation, and mitigation measures to eliminate or minimize adverse impacts;  
(5) an assessment of compatibility of the project with other existing uses; and  
(6) mitigation measures that could eliminate or minimize any adverse environmental effects for the project.

**EFFECTIVE DATE.** This section is effective July 1, 2013, and no permit for a silica sand project subject to this section may be approved after that date unless the required environmental review has been completed.



Sec. 93. **[116C.992] TECHNICAL ASSISTANCE, ORDINANCE, AND PERMIT**

**LIBRARY.**

By October 1, 2013, the Environmental Quality Board, in consultation with local units of government, shall create and maintain a library on local government ordinances and local government permits that have been approved for regulation of silica sand projects for reference by local governments.

Sec. 105. **RULES; SILICA SAND.**

(a) The commissioner of the Pollution Control Agency shall adopt rules pertaining to the control of particulate emissions from silica sand projects. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(b) The commissioner of natural resources shall adopt rules pertaining to the reclamation of silica sand mines. The rulemaking is exempt from Minnesota Statutes, section 14.125.

(c) By January 1, 2014, the Department of Health shall adopt an air quality health-based value for silica sand.

(d) The Environmental Quality Board shall amend its rules for environmental review, adopted under Minnesota Statutes, chapter 116D, for silica sand mining and processing to take into account the increased activity in the state and concerns over the size of specific operations. The Environmental Quality Board shall consider whether the requirements of Minnesota Statutes, section 116C.991, should remain part of the environmental review requirements for silica sand and whether the requirements should be different for different geographic areas of the state. The rulemaking is exempt from Minnesota Statutes, section 14.125.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 106. **INTERIM ORDINANCE EXTENSION OR RENEWAL.**

Notwithstanding Minnesota Statutes, sections 394.34 and 462.355, subdivision 4, until March 1, 2015, a local unit of government may extend for one year an interim ordinance or renew an expired ordinance prohibiting new or expanded silica sand projects, as defined in Minnesota Statutes, section 116C.99, and extend the ordinance an additional year by resolution of the local unit of government.

**EFFECTIVE DATE.** This section is effective retroactively from March 1, 2013.

