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Caitlin Shields

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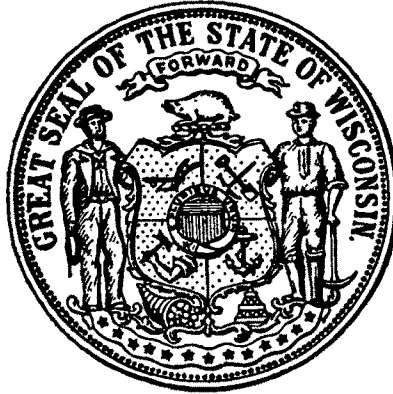
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WISCONSIN OIL AND GAS UPDATE



By: Caitlin Shields¹

I. INTRODUCTION

Wisconsin does not produce any commercial amount of crude or natural gas, and no economically viable carbon sources have been identified within the state.² Although several test holes have been drilled, the last well was drilled in 1995 to a depth of 4,966 feet in Bayfield County, which revealed nothing.³ Likewise, thousands of samples from water wells throughout the state have turned up empty.⁴ Although studies have indicated potentially significant oil and gas resources in the Great Lakes, particularly portions held by Michigan and Ohio, the federal government permanently banned Great Lakes drilling in 2005.⁵ Moreover, most states, including Wisconsin, have expressly prohibited drilling in the Great Lakes.⁶ Despite its lack of petroleum resources, Wisconsin has tremendous, high-quality sand resources, which are becoming increasingly sought after due to the recent boom in hydraulic fracturing operations across North America.

1. Caitlin Shields is an energy and environmental attorney at Rooney Rippie & Ratnaswamy in Chicago, Illinois. She represents regulated entities before courts and administrative agencies and also provides environmental, health, and safety counseling to industrial clients. She is a graduate of the University of Denver Sturm College of Law and can be reached at caitlin.shields@r3law.com.

2. *Silica Sand Mining in Wisconsin*, WIS. DEP'T OF NATURAL RES., 1 (Jan. 2012), <http://dnr.wi.gov/topic/Mines/documents/SilicaSandMiningFinal.pdf>.

3. See Albert B. Dickas, *Exploration Results of the Middle Proterozoic Midcontinent Rift Frontier Play Along Lake Superior's South Shore*, 93 OIL & GAS J. 80, 80-82 (1995).

4. WIS. DEP'T OF NATURAL RES., *supra* note 2, at 1.

5. 42 U.S.C. § 15941 (Supp. 2012).

6. WIS. STAT. ANN. § 295.33(4) (West 2004).

II. LEGAL FRAMEWORK

Notwithstanding the current and historical lack of gas and petroleum development in the state, oil and gas exploration and production are governed by chapter 295, subchapter II of the Wisconsin Statutes. Pursuant to section 295.33,

- No person may engage in the exploration for or production of oil or gas without a license from the Department of Natural Resources (the “Department”).
- No person may commit waste in the exploration for or in the production of oil or gas.
- No person may conduct drilling operations for the exploration for or production of oil or gas if the drilling extends beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes.
- A license-holder may not hire a general contractor or affiliate to operate an exploration or production site if the general contractor/affiliate has two or more felony convictions for violation of law for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States within ten years before the issuance of the person’s license, unless approved by the Department.⁷

A. Licensing Procedure

Pursuant to chapter 295, oil and gas exploration is regulated by the Department.⁸ The Department has enacted oil and gas regulations at chapter NR 134.⁹ The Department requires licenses for companies involved in oil and gas exploration, which are valid for one year.¹⁰ In order to engage in exploration, an explorer must submit an application, pay a \$300 fee, pay a bond in the amount of \$50,000 conditioned upon faithful performance of the Department’s regulations, and submit a certificate of issuance certifying that the explorer has liability insurance for at least \$50,000.¹¹ The applicant must also submit its most recent annual report and Form 10K, or, if those are not available, a report of its current assets and liabilities.¹² There is an additional drillhole fee of \$200 each for the first twenty drillholes and \$100 for each drillhole thereafter.¹³ The approval process takes ten business days.¹⁴

7. WIS. STAT. ANN. § 295.35(5) (West 2004).

8. *Id.* § 295.35.

9. WIS. STAT. ANN. § 295 (West 2004); WIS. ADMIN. CODE NR § 134 (2011).

10. WIS. ADMIN. CODE NR § 134.04 (2011).

11. *Id.*

12. *Id.*

13. WIS. ADMIN. CODE NR § 134.05(2m) (2011).

14. *Id.* § 134.05.

B. *Environmental Issues*

The Department has promulgated specific regulations to address the environmental impacts of oil and gas development. Among other things, the regulations address well or facility siting and construction, waste disposal, abandonment, and reclamation.¹⁵ Other state and county or municipal regulations address issues such as air, water, wildlife, and wetlands.¹⁶

III. SILICA SAND MINING

Although Wisconsin lacks any viable carbon resources, the state possesses high-quality sand resources. Due to the recent boom in hydraulic fracturing operations across the United States, Wisconsin is experiencing a sizable increase in permit requests to mine for “frac” sand, a type of sand with particular dimensions, used to prop open fractures in oil and gas wells during the fracking process. The Department conservatively estimates Wisconsin’s frac mining capacity to be in excess of 12 million tons per year.¹⁷ Sand mining is governed by chapter 295, subchapter 1 of the Wisconsin Statutes and regulated by the Department pursuant to chapter 135 of the Wisconsin Administrative Code, which pertains to nonmetallic mining.¹⁸ Although Wisconsin law does not require a permit to mine for nonmetallic minerals, reclamation permits are required for such operations.¹⁹ Nonmetallic mining programs are generally administered at the county or municipality level (or both); therefore, specific regulations vary throughout the state.²⁰

15. WIS. STAT. ANN. § 295.35 (West 2004).

16. *See, e.g.*, WIS. ADMIN. CODE NR § 407 (2011).

17. WIS. DEP’T OF NATURAL RES., *supra* note 2, at 3.

18. WIS. STAT. ANN. § 295 (West 2004); WIS. ADMIN. CODE NR § 135 (2011).

19. WIS. ADMIN. CODE NR § 135.16 (2011).

20. *See* WIS. ADMIN. CODE NR § 135.32 (2011).