

RESOLUTION NO. 2013-1
STATE OF WISCONSIN
Town of Frankfort
Pepin County, WI

**RESOLUTION TO ADOPT SECOND AMENDMENT TO PEPIN COUNTY
ORDINANCE NO. 181 IN THE TOWN OF FRANKFORT**

WHEREAS, on December 21, 2011, the Pepin County Board of Supervisors adopted and on December 29, 2011 published an ordinance establishing a one year moratorium prohibiting the establishment or expansion of non-metallic "frac sand" mining in Pepin County for the stated purposes of studying and revising local land use plans and evaluating and implementing available regulatory measures that could allow for appropriate and permitted frac sand nonmetallic mining operations in a manner intended to avoid undue adverse impact on the citizens and environment in the County ; and

WHEREAS, by its terms, after its effective date and during its one year term the County's initial Moratorium Ordinance prohibited the establishment in the County of any "new frac sand mining operations" and prohibited the expansion of existing ones beyond the "present physical dimensions or external footprint (to be defined as that area, land and materials for which [said operations] currently have a permit to operate)"; and

WHEREAS, on December 6, 2011, the Richardson/Bechel nonmetallic frac sand mining site in Section 10 of the Town of Frankfort received an amended nonmetallic mining reclamation permit from Pepin County affecting 43 acres in said Section, which permit had been issued before the effective date of the County Moratorium Ordinance, as a result of which it appears that the existing and previously permitted Richardson/Bechel nonmetallic frac sand mining operation was not prohibited by the terms of the County's Moratorium; and

WHEREAS, on October 17, 2012 the Pepin County Board of Supervisors adopted and subsequently published a First Amendment to its Ordinance 181 extending the duration of the Ordinance to a period of eighteen months from the date of its original enactment and on December 19, 2012, the Pepin County Board of Supervisors then adopted and subsequently published a Second Amendment to its Ordinance 181, continuing the original prohibitions and adding language that, among other things, defined "frac sand mining" and "frac sand mining operations" to include the "...transport of...any waste materials from the extraction or processing sites"; and

WHEREAS, by its terms the County's moratorium ordinance as originally enacted and as since amended is effective in a town when adopted by a town board; and

WHEREAS, on January 8, 2013 the County received a legal opinion from Attorney Ronald S. Stadler interpreting the language of its Second Amendment to Ordinance 181 to the effect that a previously existing frac sand mining operation such as the Richardson/Bechel site and in possession of a County reclamation permit "...would need to seek a permit amendment in order to haul waste material from a wash site back to the reclamation site to use as additional fill material under its existing permit"; and

WHEREAS, the Nonmetallic Mining Operating Agreement entered into on August 27, 2012 between the Town of Frankfort and Greg Bechel and affecting operations at the Richardson/Bechel site requires that a Fine Material Handling Plan be created and the County reclamation permit be amended to return Nonmetallic Mining Fine Material to the mine site (which Plan is presently under development) and also contemplates that the Plan will call for creation of test plots at the mine site and related material testing of the said Fine Material as part of the required Handling Plan; and

WHEREAS, the Town is aware that there could be disagreement between the County and Greg Bechel concerning whether the return to the Richardson/Bechel mine site of Nonmetallic Mining Fine Material for use in test plots pursuant to a Fine Materials Handling Plan would constitute the "hauling" of "waste material" contemplated in the Second Amendment to County Ordinance 181 and discussed in the Stadler opinion letter; and

WHEREAS, the Town Board of the Town of Frankfort has reviewed the Second Amendment to Pepin County Ordinance NO. 181 and finds adopting it as discussed in ¶4 of the said Second Amendment to the County Ordinance in order to assure that the amended Ordinance is in effect in the Town to be in the best interest of the Town as it and the County consider available regulatory options and act as appropriate to protect the citizens and environment of the Town and County from the adverse effects of any unsafe or incompatible land use of this nature.

NOW, THEREFORE, BE IT RESOLVED that the Frankfort Town Board hereby adopts the Second Amendment to Pepin County Ordinance 181, titled Ordinance Establishing An Eighteen Month Moratorium on Non-Metallic Mining for Frac Sand within the Jurisdictional Limits of Pepin County for the Purposes of Developing/Updating/Amending Land Use Plans and to Evaluate Regulatory Controls to Prevent Incompatible Land Uses within the County, to be effective in the Town of Frankfort; and

BE IT FURTHER RESOLVED that during the County's Moratorium period the Town of Frankfort expects and assumes that the Richardson/Bechel mine site will be operated in full compliance with all terms, conditions and requirements of the Pepin County reclamation permit now in effect and affecting the mine site; and

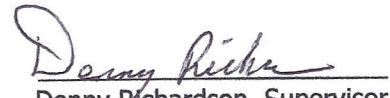
BE IT FURTHER RESOLVED that Pepin County shall have sole and separate responsibility for enforcing its Moratorium Ordinance in the Town of Frankfort and for the administration and enforcement of the County's reclamation permit; and

BE IT FURTHER RESOLVED that the Town Clerk is directed to file a certified copy of this resolution with the Pepin County Clerk upon its passage by the Town Board

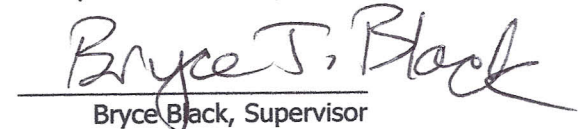
Adopted by action of the Frankfort Town Board this 12th day of March, 2013.




Brad Anderson, Chairman



Denny Richardson, Supervisor



Bryce Black, Supervisor


Attest: Maureen Manore, Clerk