

MINUTES

REGULATORY POLICY SUBCOMMITTEE COMMITTEE ON MICHIGAN'S MINING FUTURE January 20, 2021, 1:00 p.m.

Roll Call

Sean Hammond – present
Jim Kochevar – present
Jerry Maynard – present
Kirk Lapham – present
Adam Wygant – present
Hal Fitch – present

Guests

Evelyn Ravindran
Matt Johnson
Eric Coluthian, Michigan Building Infrastructure Magazine
Kay Cumbo
Shannon D
Anna Ediger
Mike Sweat
Susan Bishop
Horst Schmidt
Judy Allen – Michigan Association of Townships
Ryan Holen
Scott?

The meeting began at 1:03 p.m. with roll call.

Review Draft Meeting Minutes of December 10, 2020 Meeting

No comments, motion to accept was made by Jim Kochevar and seconded by Jerry Maynard. Minutes were approved.

Presentations

Evelyn Ravindran – Tribal perspective overview regarding Tribal rights and treaties. Each Tribe is a sovereign nation but not regularly consulted when discussing zoning at local level. Twelve tribes in Michigan but also additional Ojibwa communities outside of Michigan. Natural resources are important to the Tribe as cultural resources. Perpetual care; sudden violent water events; climate change needs to be addressed in all four subcommittees; wetlands; backfilling (best-management practice); addressing climate norm (10-year average); legacy mining.

KBIC is working with USEPA for approval of Tribal water authority. Please give an update, and is she aware of other states/Tribes with this authority? They were approved in 2020 for treatment, just begun 401 certifications, have been recognized as a “state” by USEPA for these purposes. We are aware of other tribes’ interest but not of any that have done this. We are doing this on a watershed perspective instead of single-source (intake).

Would the Tribe be in the room during mine permitting process related to discharge, or during public comment period? Tribes would prefer to be involved in development of groundwater standards during permit application development, not after-the-fact public comment period.

Can Matt address interaction with Tribes for Eagle Mine? It is not developed as part of permit process but as part of discharge permit. Not only do reservation boundaries determine impacts, but watersheds that flow into or are used by Tribes. If this is so, what are the requirements of the company and the concerns of the Tribe(s)? Do State or Tribal groundwater standards get included in State permit, or does Tribe issue its own permit? It is not known how this will work yet.

We are meeting with the State on this now, and we need to reconcile things like narrative criteria opposed to numerical criteria. The Tribe appreciated being approached before exploration to have the opportunity to point out critical areas such as wild rice restoration, fish restocking projects, etc. What would the Tribe like to see included in each report section? Specifics? Specifics have been asked for from Tribal members, and they would like to see: backfilling, climate norms, and perpetual care language. In Wisconsin, consultation language is an example – how to identify Tribes in the area or Tribal interests in area. We have asked two people to reach out to the committee to help write these topics.

It is important to identify what is on the reservation and what is not on the reservation. Some Tribes have reached out to the State to defer, and other Tribes would prefer to maintain jurisdiction (Saginaw-Chippewa water discharge). There is sovereign jurisdiction and areas off reservation but adjacent could be a gray area. We have air permitting concerns and had discussions with AQD which were helpful to air concerns that were addressed during the process, not after-the-fact during public comment period. This is helpful to get Tribal concerns incorporated up front.

Local zoning/land use regulation. How does that play out? Not zoning on Reservation? Treaty lands? There is no consulting with the Tribes, and no recognition of sovereignty. Is backfilling the Tribes preferred method of disposal? It is considered a best practice and Tribes would prefer to have this addressed in the State statute.

It is difficult to address, but GLICWIC has done some mineral mapping. The concern is can Tribes get the rights rejoined (minerals and surface)?

I will discuss Eagle mine, first under Part 632, so identifying areas for improvement, including changing some language to lessen restrictions for changes to plans and operations that have minimal or no impact (moving a building a few feet, etc.). We need to look at more detail behind closure plan as it takes five years to close a mine. We have a mature plan for mine closure, and it will be the first under this regulation so now looking at areas where change might be suggested.

Evelyn, please give your input on language clarification. There are Tribal concerns about what is a significant impact, such as cumulative impacts – would like clarification and definition. I wanted to reiterate that natural resources are cultural resources, and land-use is important to be maintained for Tribal purposes.

The bond amount is not specific. For Eagle mine, it was required that the bond cover all anticipated costs of end-of-mine life and closure, when in reality these costs are never incurred all at one time. The bond amount needed today is not the same as at start of mine, and will change as mine moves toward closure. As each phase of development, reclamation, closure is accomplished, the bond amount will vary over time. The bond is reviewed frequently. Legacy mine operations are brought up as concerns during permitting of new mines, but these issues aren't relevant to new mines in that their bonding is required to be sufficient for all phases.

Judy Allen – Townships Association presentation

I want to share concerns about impacts to citizen communities that are affected. The public should not be expected to incur costs associated with mining. One issue is mineral mapping that Michigan doesn't have; neighboring states have mineral mapping, so they are able to address issues proactively. Metamora Township undertook aggregate mapping at their own expense and have included the results in their zoning. We need to have legitimacy associated with studies stating needs for mined resources. Current concerns are with sand and gravel mines, including quality of life, neighboring properties, hours of operations and traffic load. Location affects consequences.

Concerns about contamination, brought up PFAS, and landfills. Would every operation be the same across the state? Aggregate association replied no, and each would be unique to its location. The current statute is working, and it forces government and the mine operator to work together. There are limited tools to address specific concerns. How to deal with adverse or hazardous consequences? Who has authority to determine outcomes? It is hard to find experts to address each side of conflicts. Timelines for applications are problematic, as there are no deadlines or limits to when an application must be adjudicated. I would like Part 632 to do more related to financial assurance and local input. Part 634 needs strengthening related to water quality, ability to request additional water-quality sampling, and local input related to blasting and crushing, truck routes, bonding. Ask is for – Mapping, verification of mine resources as stated by company.

What township has had mapping done? Kasson Township in Leelanau County. There are question about the aggregates industry, and location and impacts are typically controversial. What can the committee do to address concerns? Where are opportunities to avoid going to court? Arbitration? Negotiation? What works for the community?

We generally worked things out with the local unit of government. Traffic has been difficult for every community. Some work well with companies, and others are more challenging. Some have an annual review process to address concerns, compliance, and modifications. We are open to arbitration, but it hasn't gained traction with the legislature. There is difficulty identifying appropriate parties to serve as arbitrator.

Are you referring to Zoning Enabling Act? Yes, most communities have been able to make it work. The industry's concern is the lack of timeframe. The community's concern is the need to show "very serious" consequences as sometimes the truck routes, noise, and dust can be too much. An alternative is dispute resolution. There are a range of tools and options, and there is a statewide system of alternative-dispute resolution under the authority of the State of Michigan Supreme Court.

Subcommittee Report

Refining the report outline – Draft 2 was reviewed. A discussion of the report content took place, and writing assignment following revised outline. Hal gave an overview of his thoughts on the outline, and how it came to be.

We can outline different taxes by industry. The type of taxation is addressed by his subcommittee. Hal made changes to the outline, and will send the new draft to subcommittee members.

New Business

Hal requested any new issues, and no response was received.

Future meeting dates

February 18, 2021, at 1:00 p.m.

March 18, 2021, at 1:00 p.m.

Public Comments

Opened the floor at 2:43 p.m. for public comments.

Horst Schmidt asked what is meant by "alternatives analysis." Hal answered that it is an early part of the permitting process whereby the applicant must address alternative approaches to what is proposed, such as different transportation routes, different mining methods, beneficiation approaches, etc.

Horst asked if there were alternatives to the Eagle Mine. Adam answered that there were, and they were available for public comment. People may disagree that a sufficient

number of alternatives were considered but, in the end, they met the requirements of the statute.

Horst states that Aquila always focused on costs and not alternative approaches that might have lessened the impact of the mine. Nobody works together. The concern is with the “silo” approach and considers Aquila the “poster child” for negatives associated with the permitting process.

Horst statement on climate change vis-a-vis Evelyn’s comments, need to look at emissions that mine will create for land, air, and water over the life of the mine. There’s a need to hire expertise to make these analyses.

Horst addressed the upstream dam and would like the legislature to make a change to a site-type dam to reduce the possibility of a “blow-out” owing to the limited evaporation potential of slurry, lack of settling, leading to potential overloading of dam and eventual blow-out.

Would like these types of changes to mining statutes to take these comments into consideration.

The meeting was adjourned at 2:50 p.m.

New Business

None.

Public Comments

None.

Adjournment

The meeting was adjourned at 1:52 p.m.