

A SPECIAL REPORT!



*.....keeping watch on  
the industry*

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## News Release



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## NEWS RELEASE

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**40 NEIGHBORS SUE HI-CRUSH FRAC SAND**

**MINES  
FOR CREATING NUISANCES, TRESPASS, AND  
POLLUTION**

**WHITEHALL, WIS. – Forty individuals living next to two Hi-Crush frac sand facilities in western Wisconsin (24 individuals living next to the Whitehall, Wis. facility and 16 individuals living next to the Blair Wis. mine) filed suit in Trempealeau County Circuit Court on Earth Day 2019, claiming that their private property rights, land value, and quality of life have been severely diminished as a result of air pollution, blasting and other noise pollution, seismic activity from blasting, water pollution and/or depletion of groundwater aquifers, light pollution, and permanent destruction of scenic values from massive strip mining operations.**

**The plaintiffs, families who own land and live next to the Hi-Crush mining and rail load-out operations, are seeking compensation for substantial disruption of their rural quality of life, health and wellbeing from the creation of neighboring frac sand mines and associated processing and transload facilities.**

**Contrary to what people commonly may think, industrial sand mining (frac sand mining) is *not* a process of digging up loose sand. Rather, such**

**mining involves removing all vegetation from the land, the use of explosives and heavy industrial equipment to strip away large quantities of soil and bedrock (so-called “overburden”) to reach particular strata of sandstone bedrock, then blasting and excavating the bedrock, crushing the sandstone chunks, washing the sand using large quantities of groundwater and chemicals, stockpiling the sand in massive piles from which the wind often blows hazardous crystalline silica dust to surrounding homes, and then loading it onto train cars 24/7 to be transported and used in the petroleum industry in other parts of the country. (See [www.wgnhs.uwex.edu/wisconsin-geology/frac-sand-mining/frac-sand-mining-process/](http://www.wgnhs.uwex.edu/wisconsin-geology/frac-sand-mining/frac-sand-mining-process/)) Oftentimes, these very disruptive and potentially dangerous processes occur within a few hundred feet of homes in once-idyllic, peaceful rural settings.**

**Tim Jacobson, an attorney in La Crosse, Wisconsin representing the homeowners, said that he is unaware of any similar lawsuits seeking compensation from frac sand mining companies due to unreasonable interference with the quiet use and enjoyment of land and diminished quality of life. However, retired judge Tom Lister at the Fitzpatrick Skemp & Associates law firm where Jacobson works pioneered the use of an analogous legal concept, “anticipatory private**

**nuisance,” to stop two Jackson County, Wis. frac sand facilities from being constructed. In one such case, *Krueger, et al. v. AllEnergy*, the case went up to the Wisconsin Court of Appeals, which confirmed that such a legal claim is viable under Wisconsin common law.**

**According to the new lawsuits, the Hi-Crush Blair frac sand facility is capable of producing 2,860,000 tons of frac sand per year. The processing facility is located on about 1,285 acres and includes an on-site rail yard containing approximately 43,000 feet of track and has storage capacity for approximately 500 rail cars. Hi-Crush Blair conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property starts as early as 6:00 AM, running to 10:00 PM, seven days per week. Even during winter months, typically mid-November to mid-March, the dry plant continues processing and loading rail cars. With processing and loading of sand 24/7/365 and extraction of minerals and related hauling of extracted material within the mine property starting as early as 6:00 AM, running to 10:00 PM, seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.**

**Similarly, the Hi-Crush Whitehall facility is capable of producing 2,860,000 tons of frac sand per year. The processing facility is located on 1,447 acres, with an on-site rail yard that contains approximately 30,000 feet of track and has storage capacity for approximately 500 rail cars. During entire seasons of the year, the Whitehall location conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property runs around the clock, seven days per week. Blasting operations occur between 10:00 AM and 3:00 PM.**

**In addition to the day-to-day nuisances the plaintiffs have alleged, there have been a variety of pollution incidents, citations, and accidents involving the two defendant Hi-Crush mines of great concern to the plaintiffs in these cases.**

**For example, in May 2018, Hi-Crush in Whitehall breached a holding pond, causing about 10 million gallons of liquid and mine sludge to spill onto neighboring lands and into a tributary of the Trempealeau River, turning the river orange for days. According to the Wisconsin Department of Natural Resources at the time, water samples taken the day of the spill showed high levels of arsenic, lead and other heavy metals. Even Hi-Crush environmental compliance manager Jeff**

**Johnson publicly conceded the mine sludge could contain trace elements of polyacrylamide. Tests showed lead concentrations of more than 10 times allowable levels in water sampled near where the spill entered Poker Creek, and aluminum was measured at more than 1,000 times the limit. There also were high levels of beryllium, cadmium, chromium, copper, magnesium, nickel and other contaminants.**

**Separately and preceding the 10-million-gallon spill of mine sludge, neighbors Mike and Stacy Sylla have alleged in their complaint that their well water supplies have been polluted and rendered undrinkable due to dangerous and harmful levels of iron, arsenic (which has tested as high as approximately ten times EPA safety standards), and excessive turbidity since the frac sand facility started operating.**

**Other plaintiffs point out that Hi-Crush Blair received a notice of violation from the Wisconsin DNR for exceedance of arsenic starting in or about Nov. 2016, with exceedance at least through 10/16/2017. Groundwater contamination reached a point of being as high as four times the acceptable limit of arsenic, without any notice being provided to neighbors regarding potential impact to their drinking water wells. The plaintiffs further allege that Hi-Crush Blair kept information about the**

**arsenic contamination secret from the neighboring public until the matter became subject to a building permit for a pump house, which happened to get disclosed in the local newspaper. Neighboring well water supplies of one or more of the Blair plaintiffs have experienced excessive turbidity and/or sediment since the mine began operations and blasting.**

**Additionally, according to Mine Safety and Health Administration reports (<https://arlweb.msha.gov/drs/drshome.htm>), Hi-Crush Blair has received a total of 27 citations or orders for violations (four in 2015, five in 2016, eight in 2017, seven in 2018, and three in the first quarter of 2019). Hi-Crush Whitehall, despite being shut down during a couple extended periods, had a total of 19 citations or orders for violations over just three years (seven in 2015, seven in 2016, and five in 2017). The Whitehall site alone reported eight worker injuries in 2017, a rate more than 10 times the national average, according to MSHA. In 2017, Hi-Crush Blair had 3 operator injuries with an incident rate of 3.83, compared to a national rate of 1.38. Thus, the accident rate at Blair for that time period is nearly three times the national average.**

**The complaints filed in Trempealeau County Circuit Court assert claims for public and private nuisance, trespass, negligence and negligence *per***

**se, and strict liability for conducting ultra-hazardous activities, such as blasting and storing millions of gallons of mine sludge near people's homes.**

**Crispin Pierce, Ph.D., a professor from the University of Eau Claire, has pointed out that one hundred million metric tons/year of industrial silica sand is mined, principally from west-central Wisconsin, according to an affidavit filed in an anticipatory nuisance case against a proposed Jackson County mine. Some portion of this material becomes airborne, creating particulate pollution in the PM2.5 and PM10 size ranges. Dr. Pierce further concluded that crystalline silica is a component of particulate matter generated from mining activity and causes chronic respiratory diseases, silicosis and lung cancer. The US EPA AERMOD air dispersion modeling program (used in DNR permitting of frac sand facilities) finds that frac sand plants increase PM2.5 and PM10 particulate pollution in a radius of at least 3.5 km from these facilities.**

**Currently, the DNR allows frac sand mines and processing plants to operate without estimating, monitoring, or controlling fine particulate matter (PM2.5) that would impact air quality. In 2015, the DNR issued "Guidance for PM2.5 Permit Modeling," a document that outlined how the**

**agency would permit industrial activities that emit fine particulate matter. But the EPA put the DNR on notice on August 26, 2015 that the guidance document didn't follow the Clean Air Act. As much as 80% of particulate emissions from some frac sand facilities are not modeled by the DNR during the air permit process. Furthermore, the DNR ignores the proximity of homes to frac sand facilities in granting air permits.**

**“Frac sand mining causes significant social and psychological harm to adjacent residents who have not elected to live near mining or processing operations,” according to Thomas Pearson, Ph.D., an Associate Professor in the Social Sciences Department at the University of Wisconsin – Stout, and author of the book, *When the Hills Are Gone: Frac Sand Mining and the Struggle for Community*.**

**“Permit conditions fail to adequately mitigate the psychosocial impacts that include social strain and loss of community cohesion; anxiety about uncertain environmental hazards; stress from persistent noise, vibration, light pollution, and excessive dust; and loss of place. In addition to having consequences for mental health and well-being, these psychosocial impacts undermine residents' enjoyment of home and property and erode their overall quality of life,” Pearson states.**

**Frac sand mining is a boom-and-bust industry.**

**“[T]he demand for frac sand has increased exponentially” over the previous decade, according to a Wisconsin DNR report from 2012. As of May 2016, there were 128 Industrial Sand Facilities (Mines, Processing & Rail Loading), 92 active facilities, 32 inactive facilities, and 4 Facilities Reclaimed/In Process of Final Reclamation.**

**([www.dnr.wi.gov/topic/mines/ismmap.html](http://www.dnr.wi.gov/topic/mines/ismmap.html))**

**A 2014 report from The Land Stewardship Project, entitled “*Breaking the Rules for Profit: An Analysis of the Frac Sand Industry’s Violations of State Regulations & Manipulation of Local Governments in Wisconsin,*” concluded that “this is an industry that consistently ignores state regulations enacted for the sake of the health of local citizens, rural communities, and the land.”**

**([www.landstewardshipproject.org/posts/660](http://www.landstewardshipproject.org/posts/660))**

**“These lawsuits against two Hi-Crush mines are just the tip of the iceberg,” Jacobson contends.**

**“The frac sand industry sprung up nearly overnight in western Wisconsin with a huge number of facilities, taking advantage of a lack of regulation, and town and county boards poorly prepared for this onslaught. Often, rural homeowners are left pinned up against these gargantuan facilities, trapped in a living hell. Until now, they have had little or no recourse for the**

**destruction of their quality of life,” Jacobson added.**

**“I believe truth prevails,” said Tom Lister. “We all have a right to the quiet and peaceful use and enjoyment of our homes and properties, and to be free of unreasonable interference with these rights by those whose only motive is profit.”**

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***Welcome to the Frac Sand Sentinel, a newsletter highlighting resource links, news media accounts, blog posts, correspondence, observations and opinions gathered regarding local actions on, and impacts of, the developing frac sand mining and processing industries.***

***The content of this newsletter is for informational purposes only. The editor of the Frac Sand Sentinel does not accept any responsibility or liability for the use or misuse of the content of this newsletter or reliance by any persons on the newsletters contents.***

***CHECK OUT THE WEBSITE: [CCC-WIS.COM](http://CCC-WIS.COM) and for additional information, [click here](#) for panoramic aerial views of frac sand mines, processing plants, and trans-load facilities. [FracTracker.com](http://FracTracker.com) is also an excellent source of information***