

Gogebic Taconite's Strip Mine Legislation Should Be Rejected

A Fact Sheet Briefing Paper on 2011 Assembly Bill 426 produced the Sierra Club and Wisconsin Resources Protection Council

The highly controversial bill that Gogebic Taconite wrote for itself with help from the Governor's office will be reintroduced in the 2013 Legislature. 2011 AB 426 is the most extreme example of special interest mining legislation ever seen here. If approved, it would pave the way for the single most destructive mining proposal ever in Wisconsin by exempting it from important environmental safeguards and severely limiting regulatory, tribal and public involvement.

History of Gogebic Taconite's effort to write its own permits

Florida-based Cline Group, one of the nation's largest private coal mining companies, formed Gogebic Taconite (GTac) in 2010 and announced interest in the iron ore (taconite) deposit stretching 22 miles across the Penokee Range in Ashland and Iron counties. GTac, a company with no experience mining taconite, was granted permits in 2011 to drill exploration boreholes in the deposit but never used the permits and never applied for permits to mine.

Instead, GTac worked behind the scenes to enact significant changes and reductions to Wisconsin environmental law to make mining the deposit cheaper, faster, and easier. GTac closed its office in Hurley and "suspended" the proposal in June 2011 after the legislation it commissioned wasn't taken up in the state budget by new Governor Walker.¹

Correspondence between attorneys hired by GTac, Governor Walker's office and the Legislative Reference Bureau in 2011 prove that GTac was working on its legislation immediately after the Governor took office in January 2011.² By May, 2011, the Governor's policy, communications, legislative, and legal staff along with the Department of Natural Resources and Department of Administration, were involved in drafting the mining bill beginning in May 2011 with the first draft of LRB 2035 and continuing through two more drafts. The final draft, LRB 2035/3 was introduced as AB 426 on Dec. 8, 2011. GTac President Bill Williams stated that day that he hadn't seen the bill³ and denied playing a role in drafting it despite news reports that GTac attorneys had largely written the bill.⁴

The Geological Premise Behind AB 426 is False

GTac's central premise and most important claim used to justify creation of a streamlined, less restrictive ferrous (iron) mining regulatory program is that the iron ore in Ashland and Iron Counties is more environmentally safe compared to other ores. GTac and proponents of its proposal claim that the taconite ore there does not contain sulfide minerals (mainly pyrite) which can cause significant

¹ Mike Ivey, Capital Times Biz Beat, March 8, 2012

² Email records from Gov. Walker's office to comply with Open Records Request from Rep. Roys filed 12/12/11. Records were released on 5/31/12.

³ Todd Richmond, Associated Press, *Wisconsin GOP releases long-awaited mining bill*, 12/8/11

⁴ Lee Bergquist, Milwaukee Journal Sentinel, *Hearing grows heated over bill to hasten mining approvals*, 12/14/11

environmental damage to water supplies. Pyrite breaks down when exposed to air and water to form sulfuric acid which causes acid mine drainage of dissolved toxic metals.

It may be possible that there is no pyrite in the taconite iron ore but this claim is unproven since GTac has yet to release any information on the geochemical content of the ore. Even if there is no pyrite in the ore, a known issue lies with the huge amounts of waste rock overlying the deposit. The sulfide-bearing Tyler Shale Formation is in the way of the deposit and would have to be extracted and discarded as waste.

The U.S. Geological Survey describes the Tyler Shale Formation as a ***black pyritic shale and slate***⁵(emphasis added). And independent geological studies have confirmed that there are significant sulfides in pyrite in the waste rock adjacent to the ore⁶. The geologists estimate that just one cubic kilometer of Tyler Shale could contain the pyrite equivalent of 10 billion gallons of sulfuric acid of car battery strength.

GTac's claim used to justify AB 426 for only ferrous mining and only its proposal then is an entirely artificial distinction without scientific basis and is disproved by both the U.S. Geological Survey and independent geologists. There is pyrite in the waste rock that must be moved to mine the taconite and it will cause acid mine drainage if exposed to air and water. GTac has failed to submit any studies to justify these radical changes to state law. It appears that state legislators who voted for AB 426 were deliberately misled by GTac about the safety of taconite mining and cast votes based on unproven mining industry rhetoric over scientific fact. State legislators must exercise due diligence and determine the veracity of GTac's claims before considering additional votes to deregulate existing law for this proposal.

Minnesota and Michigan taconite Mines are chronic polluters

A 2012 study by the Sierra Club found that every operating taconite mine and mill in Minnesota and Michigan are recent chronic polluters. Research found that all 10 operating taconite mines and iron concentrate producers have serious recent air and water quality violations, resulting in more than \$10 million in fines, stipulations, and cleanup orders over the last 10 years alone⁷. GTac and proponents of its proposal point to laws from Minnesota and Michigan as examples for Wisconsin. Wisconsin legislators should be extremely wary of duplicating provisions from states where taconite mining is indisputably damaging the environment.

Wisconsin Mining Law Already Regulates Iron Mining

Wisconsin's comprehensive mining law program was designed to include iron ore mining. In fact, Wisconsin's only taconite mine, Inland Steel's Jackson County Iron Mine, modified its reclamation plans

⁵US Dept. of Interior, US Geological Survey, *The Gogebic Iron Range: A Sample of the Northern Margin of the Penokean Fold and Thrust Belt*, USGS Professional Paper 1730, William F. Cannon, Gene L. LaBerge, John S. Klasner, and Klaus J. Schulz, 2008

⁶ Testimony of Geologist Jason Huberty and Geochemist Joseph Skulan to the Joint Committee on Finance, Feb. 17, 2012

⁷ Sierra Club, *Environmental Track Record of Taconite Mining*, 2012

to meet the requirement of the new law in the early 1980's. Kennecott, Inland Steel, and Exxon each participated in the consensus process of development of the current mining laws that resulted in a compromise approach to mining regulation that explicitly allows some amounts of pollution. For example, the law acknowledges that mining will pollute groundwater and allows a specified sacrifice zone for contamination.

Kennecott's Flambeau Mine received permits to mine under the current program proving that mining can be permitted under current law. The mining law is designed to be flexible in response to different types of mining in any type of ore at different sites using scientific study to guide the development of mine permits and any limits on mining activities.

Public Hearings on AB 426

Each public hearing on AB 426 demonstrated strong public majorities in opposition to the bill. The first public hearing on GTac's legislation was held by the Assembly Committee on Jobs, Economy and Small Business in West Allis on Dec. 14, 2011, five days after the release of the bill. The results showed clear opposition: **63% of registrants opposed the bill (225); 37% were in favor (131).**⁸

The second public hearing was held by the same committee on January, 11, 2012 in Hurley just a few miles from GTac's proposed open pit taconite mine, home of GTac's offices and in a region of Wisconsin that saw extensive underground iron mining into the 1960's. The results from this hearing demonstrate overwhelming opposition: **85% of registrants opposed AB 426 (358); 15% were in favor.**⁹ 358 state residents registered or spoke in opposition while 61 were in support.

The final hearing on AB 426 was held by the Joint Committee on Finance on February 27 at the state Capitol. The results demonstrate a trend of increasing opposition: **92% of registrants opposed AB 426 (353); 8% in favor (31).**¹⁰ **In total, 937 of 1160 Wisconsin citizens attending the three hearings on AB 426 opposed the bill, more than 81% or a more than 4-1 margin.**

Statewide Opposition

GTac's claims immediately garnered widespread opposition from state organizations as the proposal directly threatens hundreds of acres of wetlands, streams and rivers, and forest habitat at the site with permanent destruction and long term risk from acid mine drainage.

Every state-wide environmental and conservation organization opposed AB 426 and turned out hundreds of members to testify and contact legislators. The groups included the Sierra Club, Wisconsin Resources Protection Council, League of Conservation Voters, the Nature Conservancy, Clean Wisconsin, River Alliance of Wisconsin, Wisconsin Wetlands Association, Wisconsin Wildlife Federation, 1000 Friends of Wisconsin, Midwest Environmental Advocates, and the Wisconsin Association of Lakes.

⁸ Record of Committee Proceedings, Assembly Committee on Jobs, Economy and Small Business

⁹ Ibid.

¹⁰ Record of Committee Proceedings, Joint Committee on Finance

Public Polling on Mining

In October, 2011, the conservative-leaning Wisconsin Policy Research Institute released results showing 51% opposition to reducing environmental regulations for mining.¹¹ A poll commissioned by the League of Conservation Voters in February 2012 found 72% of those polled were opposed to diminishing public participation in mine permitting via contested case hearings. 69% were opposed to sacrificing wetlands for mining wastes and 77% opposed making taxpayers foot the bill for mine permitting costs.¹²

Committees approve AB 426, Senate says no

Despite the demonstrated strong public opposition to the legislation, the Assembly Committee on Jobs, Economy and Small Business voted on a party line vote of 9-5 in favor of AB 426 in Executive Session on January 24, 2012. The Joint Committee on Finance also voted for approval March 5, 2012 on party line votes of 12-4. The bill was defeated by one vote the next day when Republican Senator Dale Schultz joined Democrats in the Senate to vote against the bill¹³ and GTac announced that day that they were abandoning the proposal¹⁴. GTac has publicly stated it will reconsider the proposal should its legislation be brought back up in 2013 and Governor Walker and GOP leaders state that they will make the bill a priority in the next session of the legislature.

GTac's proposal would be the largest mine of any kind in WI history

For comparison, here are the statistics on recent and prospective mines. The Flambeau mine pit was 35 acres and 1.9 million tons of ore was produced over 3.5 years. Flambeau Mining Company itself dubbed it "The World's Smallest Copper Mine." The Lynne, Bend and Reef deposits are between 4-6 million tons, though no formal applications to mine have been submitted.

The entire Jackson County Iron Mine site was approximately 1300 acres and produced 9 million tons of ore over 13 years. Based on a conservative estimate of the ore to waste stripping ratio of 1:2, a minimum of 18-20 million tons of wastes were left behind in the tailings dump and waste piles.

GTac has released very little detail on the first phase of its proposed mine in Ashland and Iron Counties. We do know that the open pit alone is estimated at around 3800-4200 acres, the mill and sites for wastes are estimated at 3500 acres. The total size of the mine site could be up to 7700 acres or 12 square miles.¹⁵

Using GTac's limited data, an estimated 8 million tons of taconite ore would be produced and would leave behind 16 million tons of waste tailings annually for 35 years. Each year, an additional 10 million tons of waste rock requiring removal to get to the ore would be produced. The totals for the 35-year

¹¹ See: <http://wpri.org/polls/Oct2011/poll103011.html>

¹² See: http://www.conservationvoters.org/images/pdf/20120227_partxi_polling_final.pdf

¹³ See AB 426 legislative history at: <https://docs.legis.wisconsin.gov/2011/proposals/ab426>

¹⁴ Todd Richmond, Associated Press, *Mining company says it's pulling out of Wisconsin after Senate bill stalls* March 6, 2012

¹⁵ Great Lakes Indian Fish and Wildlife Commission, *Iron Mining in the Lake Superior Basin*, October, 2011

proposed phase one could produce 280 million tons of taconite pellets and leave behind 910 million tons of wastes (560 MT of tailings; 350 MT of waste rock/overburden) that must be safely managed in perpetuity.

The Impacts of AB 426

The non-partisan state Legislative Council analysis of AB 426 shows that the bill creates an entirely new regulatory program just for iron mining and only applies to the GTac proposal as there are no other economic iron deposits in the state¹⁶. There are numerous independent reports from concerned environmental and conservation groups supporting the Legislative Council's conclusion that the GTac legislation guts environmental protections to enable its own proposed mine (list follows below).

Among the most egregious provisions of AB 426 which sacrifices the health of Wisconsin citizens and our environment are the following:

- **Removes all contested case hearings, which provide the only opportunity to challenge data and question mining officials on the record and which improve permits via review of scientific data.**
- **Removes citizens' right to sue for illegal environmental damage by a mine.**
- **Only one required public hearing for the entire mining project, current law requires a minimum of three.**
- **Allows mining corporations to dump toxic mine waste into sensitive wetlands and floodplains.**
- **Allows mining corporations to contaminate the groundwater of neighboring properties.**
- **Allows mining corporations to draw down water levels from rivers, lakes, streams and groundwater.**
- **Allows mining law to supersede all other environmental regulations, unlike current law which gives deference to existing environmental laws, and unlike laws all other industry is subject to.**
- **The bill conflicts with the historic Great Lakes Compact by allowing groundwater pumping that will cause environmental harm.**
- **The bill changes definitions in the current mining moratorium to make sure that law would not apply to mining even if sulfide-containing materials are found.**
- **The bill does not provide for consultation with the affected Indian tribes and the recognition of their treaty rights in the ceded territory of Wisconsin.**

The Bad River Watershed and Lake Superior are threatened by AB 426

AB 426 threatens to enable open pit strip mining of taconite in the Bad River Watershed of Lake Superior on a scale never seen before in Wisconsin. The mine site is adjacent to the sacred wild rice beds of the Bad River Ojibwe Tribe and fundamentally threatens their protected natural resources and way of life. The Kakagon and Bad River Sloughs of the Bad River and Lake Superior are a Ramsar *Wetland of International Importance*¹⁷ and the Kakagon Sloughs are a designated National Natural Landmark due to

¹⁶ Wisconsin Legislative Council Memo to Assembly Committee on Jobs, Economy and Small Business, Dec. 9, 2011

¹⁷ The United States is a party to the Ramsar Convention on Wetlands, an intergovernmental and global treaty committing member countries to maintain the ecological character of their Wetlands of International Importance (Ramsar, Iran, 1971). The Kakagon and Bad River Sloughs are one of only thirty four Ramsar sites in the U.S.

the uniqueness of the sloughs and the size of the natural wild rice beds. At 16,000 acres, they are the largest and healthiest full-functioning estuarine system remaining in the upper Great Lakes region.

The state recognized the value of the Penokees when it identified it as an Important Bird Area and a Conservation Opportunity Area of Continental Significance in the 2005 Wildlife Action Plan.¹⁸ The Wildlife Action Plan identifies important conservation areas where Species of Greatest Conservation Need exist and identifies the Penokees as needing conservation to maintain them as a large, continuous, climate change-resistant forest. The state of Wisconsin also identified the Penokee Range as an important area to protect for its unique geology and future conservation and recreational opportunities.¹⁹

Conclusion

Wisconsin's mining laws are a carefully crafted compromise and already contain numerous exemptions and exceptions from law for mining. The current regulatory program for mining in Wisconsin was designed for all forms of mining including taconite iron ore. AB 426 is deeply flawed and unacceptable public policy that has already been rejected. The legislation is premised on claims that are not scientifically sound or proven. It appears that state legislators were deliberately misled by GTac about the safety of taconite mining and voted for AB 426 based on unproven mining industry rhetoric over scientific fact. It was a legislative fix in search of a problem written by one mining company for an equally unacceptable proposal and should be rejected by future legislatures as unnecessary and destructive.

For more information and background on the taconite mine proposal and the unacceptability of AB 426 go to:

The Nature Conservancy:

<http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/wisconsin/mining-in-the-penokee-gogebic-range-whats-at-risk.xml>

The Sierra Club: <http://wisconsin.sierraclub.org/PenokeeMine.asp>

Clean Wisconsin: <http://cleanwisconsin.org/mining>

The League of Conservation Voters: <http://www.conservationvoters.org/index.php/issues/mining-legislation>

Wisconsin Resources Protection Council: <http://www.wrpc.net/>

Mining Impact Coalition of Wisconsin: <http://www.miningimpactcoalition.org/>

The Water's Edge: www.savethewatersedge.com

¹⁸ See: <http://dnr.wi.gov/topic/wildlifehabitat/actionplan.html>

¹⁹ Wisconsin DNR, Wisconsin Land Legacy Report, 2006