

A BRIEF SUMMARY OF WISCONSIN'S NONMETALLIC MINING RECLAMATION PROGRAM



**Publication WA 828
Rev. 2006**

**Waste & Materials Management
P.O. Box 7921
Madison, WI 53707-7921**

Nonmetallic mining is a widespread activity in Wisconsin. The variety of geologic environments provides for a diverse industry. An estimated 2,500 sites are mined to provide aggregate for construction, sand, gravel and crushed stone (limestone and dolomite) for road building and maintenance as well as for agricultural lime. A smaller number of quarries provide dimension stone for monuments, volcanic andesite for shingles, peat for horticulture and landscaping, industrial sand for export out-of-state for the oil industry as well as a considerable variety of materials for other uses.

Chapter 295, Wis. Stats., required that the Department draft rules, chapter NR 135, Wis. Adm. Code, to implement the nonmetallic mining reclamation program. The overall goal of the rules is to provide a framework for statewide regulation of nonmetallic mining reclamation by setting up a locally administered reclamation permit programs and establishing uniform reclamation standards. The county or local reclamation program regulates the reclamation of nonmetallic mines but not operations. Likewise, it has no effect upon local zoning decisions such as those related to the approval of new mine sites. The process of siting a mine continues to be a local matter governed under existing zoning procedures by local authorities. The DNR's role is to provide technical support for reclamation programs and to audit the performance of county and municipal programs.

A strong emphasis is placed on compliance assistance to prevent compliance problems. Should violations of the uniform reclamation standards or the reclamation plan occur, ch. NR 135 includes enforcement provisions.

COUNTY PROGRAM CREATED BY ORDINANCE

The law required that all counties adopt an ordinance establishing a reclamation program capable of ensuring compliance with the uniform state reclamation standards contained in the rule. Cities, towns and villages also have the option to adopt an ordinance and administer a program within their jurisdiction. The Department provides a model ordinance for use and adaptation of counties and municipal authorities with language that is flexible enough to incorporate local requirements but specific enough to implement the standards contained in the reclamation rule.

RECLAMATION PERMIT

No mining may be conducted without a valid reclamation permit unless exempt from ch. NR 135. New mines must apply for and receive a reclamation permit prior to commencing operations. To avoid unduly burdensome regulation the rules provide reasonable exemptions such as for sites less than one acre, a pit on a farmer's land for personal use or for excavations incidental to building construction.

To avoid unnecessary regulation, there are exemptions where other regulatory mechanisms exist so as to avoid redundancy. Examples include: excavations for highway purposes, excavation sites used in support of and on the same

property as landfills and operations that are subject to the reclamation requirements of the Department of Transportation (DOT). A Memorandum of Understanding between DNR and DOT addresses the reclamation of sites covered under the DOT exemption and ensures their successful reclamation in accordance with DOT requirements. Likewise, mining operations in or adjacent to navigable waters are exempt because they are regulated by the DNR under ch. NR 340, Wis. Adm. Code.

The reclamation permit is based on the reclamation plan which is the vehicle to ensure that all necessary steps are taken to ensure that the approved post-mining land use is achieved. The reclamation permit is to be a life-of-mine permit (no need for renewal although significant modifications may require approval).



RECLAMATION PLAN

A reclamation plan is the basis for granting a reclamation permit. It is essentially a blueprint describing the steps that are necessary to reclaim the site to achieve a post-mining land use. The reclamation plan must demonstrate compliance with the uniform reclamation standards provided in ch. NR 135. The reclamation plan provides environmental protection during the mining process by encouraging contemporaneous reclamation to minimize the acreage exposed to wind and water erosion. It also addresses topsoil salvage and protection to facilitate future reclamation activities. Based on the declared post-mining land use, a reclamation plan capable of supporting the post-mining land use and of meeting the reclamation standards will be developed by the operator and approved by the regulatory authority. Finally, the reclamation plan provides the basis for determining the amount of financial assurance that must be posted with the regulatory authority.

RECLAMATION STANDARDS

A very important aspect of the reclamation program is to achieve compliance by favoring performance standards rather than prescriptive standards. This serves to encourage creativity on the part of operators in developing site-specific, cost-effective solutions.

Reclamation standards address the salvage and protection of topsoil, including runoff management features that must be in place prior to site disturbance. The standards address revegetation or any other site stabilization methods to meet the approved land use and provide a basis for judging reclamation success. In addition, protection of waters of the state is achieved by erosion and sedimentation control and by emphasizing the policy of not having any more acreage affected by mining and exposed to erosion than is necessary to support the operation at any point in time.

In short, the reclamation of the mine according to an approved plan and in compliance with the reclamation standards will result in a stable, non-eroding site and a productive end land use. Thus, there is increased potential to enhance habitat and increase land values and tax revenues.

FINANCIAL ASSURANCE

The objective of financial assurance is to ensure reclamation. The amount of this financial assurance is based on the cost to implement the reclamation plan. A surety bond or other form of financial assurance is required from the mine operator to guarantee that the regulatory authority has the funds necessary to perform site reclamation in the event of a default. Other options for financial assurance include: a certificate of deposit, an irrevocable letter of credit, government securities among others. A special provision was included in the rules to make it more feasible for small operators, in particular, to provide financial assurance without jeopardizing the solvency of their business. An example of this would be an interest bearing account designed to grow to meet the needs of reclamation.

DEPARTMENT TECHNICAL ASSISTANCE AND OVERSIGHT

The Department provides technical support and advises counties and municipal regulatory authorities regarding the ability of their reclamation program to ensure that operators in their jurisdiction reclaim mining sites in a manner that complies with the uniform statewide reclamation standards set out in ch. NR 135. This support includes providing model ordinances, technical guidance on reclamation plans, financial assurance and the establishment of reasonable fees. Upon request, the Department may act to assist in resolving disputes between regulatory authorities and operators. In addition, the Department is required by law to audit all county and municipal programs to ensure that they are in compliance with the program requirements in the rule and, if need be, to become the regulatory authority in any county that fails to successfully administer a nonmetallic mining reclamation program.

PROGRAM FUNDING

Reclamation programs must be self-funded through fees on the unreclaimed portions of active mining operations. In this way the reclamation program is designed to be funded without imposing a "direct" burden on the tax payers of the state. These fees are intended to support county or municipal program administration as well as statewide Department oversight and technical support. By law, the county or municipal entity administering a nonmetallic mining reclamation program sets and collects fees that represent, as closely as possible, their administrative costs. In addition, fees are to be collected and forwarded to the Department to cover the DNR's statewide administrative costs.

Operators are required to provide annual reports of unreclaimed acres (basis of assessment of fees) to the regulatory authority each year. On an annual basis, the regulatory authority summarizes operator reports, and in turn, reports this and other information to the Department.

REGISTRATION

The law provides for the registration of marketable nonmetallic mineral deposits to afford a degree of protection for registered deposits. Registered deposits are protected by statute from any county or local zoning or other decision that permanently interferes with nonmetallic mining at the site.

To prevent spurious registration there is a requirement that a registered geologist or engineer must certify that a marketable deposit exists on the land proposed for registration. Also, county and local governments have the right to object to an improper registration or renewal. Registration lasts for a period of ten years and may be automatically renewed for an additional ten year period. Zoning authorities may rezone land containing a registered deposit as long as this is done in accordance with an approved land use plan and only if mining has not yet begun. Further, such rezoning cannot take effect until registration has expired. Registration, in conjunction with wise land use planning and zoning, will help to reserve these valuable and finite resources for the needs of future generations.

QUESTIONS

Contact 608/266-2111 or Waste.Materials@dnr.state.wi.us for further information.

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