

## CHAPTER 295

## NONMETALLIC MINING RECLAMATION; OIL AND GAS

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Note: 1995 Wis. Act 227 renumbered the provisions of chs. 144, 147, 159 and 162, Stats. 1993–94, to be chs. 280–299, Stats. 1995–96. For a table tracing former section numbers see the Addenda & Errata at the end of Volume 5.

## SUBCHAPTER I

## NONMETALLIC MINING RECLAMATION

**295.11 Definitions.** In this subchapter:

- (1) “Department” means the department of natural resources.
- (2) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.
- (3) “Nonmetallic mining” means all of the following:
  - (a) Operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates or nonmetallic minerals such as stone, sand, gravel, asbestos, beryl, clay, feldspar, peat, talc and topsoil, including such operations or activities as excavation, grading and dredging.
  - (b) On-site processes that are related to the extraction of mineral aggregates or nonmetallic minerals, such as stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, crushing, screening, scalping and dewatering.
- (4) “Nonmetallic mining reclamation” means the rehabilitation of a nonmetallic mining site, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences where necessary and, if practical, restoration of plant, fish and wildlife habitat.
- (5) “Nonmetallic mining refuse” means waste soil, rock, mineral, liquid and vegetation and other waste material resulting from nonmetallic mining. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining.
- (6) “Nonmetallic mining site” means all of the following:
  - (a) The location where nonmetallic mining is proposed or conducted, including all surface areas from which materials have been or will be removed.
  - (b) Storage and processing areas related to the nonmetallic mining.
  - (c) Areas where nonmetallic mining refuse is deposited.
  - (d) Areas disturbed by activities such as the construction or improvement of private roads or haulageways for nonmetallic mining.
  - (e) Buffer areas necessary to assure appropriate final slopes after nonmetallic mining reclamation.

(7) “Operator” means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

(8) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(9) “Replacement of topsoil” means the replacement of the topsoil that was removed or disturbed by nonmetallic mining, or the provision of soil that is at least as adequate as the topsoil that was removed or disturbed, for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

(10) “Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (3).

History: 1995 a. 227 s. 801, 995.

**295.12 Nonmetallic mining reclamation rules.**

(1) RULES. The department shall establish all of the following by rule:

- (a) Uniform statewide standards for nonmetallic mining reclamation.
- (b) Provisions for the administration of this subchapter by the department.
- (c) Uniform statewide standards for the administration of a nonmetallic mining reclamation ordinance by any county, city, village or town.
- (d) The text of a nonmetallic mining reclamation ordinance that conforms with this subchapter.

(2) STANDARDS. (a) The department shall establish nonmetallic mining reclamation standards under sub. (1) (a) that are applicable both during nonmetallic mining and after the termination of nonmetallic mining.

(b) The department shall include in the standards specific findings regarding the necessity of nonmetallic mining regulation to protect public health, safety and welfare and the environment.

(c) The department shall establish different nonmetallic mining reclamation standards and compliance schedules for those portions of a nonmetallic mining site that were mined before the effective date of the ordinance, and those portions of a nonmetallic mining site that are mined on or after the effective date of the ordinance, in order to avoid excessive costs and to encourage the development and reclamation of existing nonmetallic mining sites, to the extent practicable.

(d) Standards for those portions of a nonmetallic mining site that are mined on or after the effective date of the ordinance shall include requirements related to the removal or reuse of nonmetallic mining refuse, removal of roads no longer in use, stabilization of soil conditions, grading the nonmetallic mining site, replacement of topsoil, establishment of vegetative cover, control of surface water flow and groundwater withdrawal, prevention of environmental pollution, construction of fences where necessary and, if practical, protection or restoration of plant, fish and wildlife habitat.

(e) Standards for those portions of a nonmetallic site that are mined before the effective date of the ordinance shall only include those minimal requirements necessary for the stabilization of soil conditions, establishment of vegetative cover and the prevention of environmental pollution. If additional nonmetallic mining takes place on a portion of a site that was mined before the effective date of the ordinance, that portion of the site shall be subject to the standards under par. (d) and the remainder of the site shall be subject to this paragraph.

**(3) TEXT OF ORDINANCE.** The text of the nonmetallic mining reclamation ordinance under sub. (1) (d) shall include all of the following:

(a) Nonmetallic mining reclamation standards that are identical to the standards established under sub. (1) (a).

(b) A requirement for the operator to submit a nonmetallic mining operation plan including maps, information about the nonmetallic mining site, a description of the proposed nonmetallic mining including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining. The operation plan shall be designed to assure successful nonmetallic mining reclamation consistent with the standards in sub. (2) (d) and (e), to minimize the costs of nonmetallic mining reclamation and, to the extent practicable, to minimize the area disturbed by the nonmetallic mining at any time and to provide for continuous nonmetallic mining reclamation. For those portions of a nonmetallic site mined on or after the effective date of the ordinance, the operation plan shall provide for buffer areas on the nonmetallic mining site to assure appropriate final slopes after nonmetallic mining reclamation.

(c) A requirement for the operator to submit a nonmetallic mining reclamation plan including maps, information about the nonmetallic mining site, a description of the proposed nonmetallic mining reclamation including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining reclamation.

(d) A requirement for the operator to obtain a nonmetallic mining permit in order to engage in nonmetallic mining or in nonmetallic mining reclamation; a requirement for a 5-year permit term unless a shorter permit term is requested by the applicant; standards for the issuance, renewal, modification, suspension or revocation of the permit; a requirement for public notice and an opportunity for a public hearing before issuance, renewal, modification, suspension or revocation of the permit; a requirement to conduct a public hearing on the issuance, renewal or modification of a permit, if requested within 30 days after receipt of the nonmetallic mining operation and reclamation plan; a right for any person who meets the requirements of s. 227.42 (1) to obtain a contested case hearing under ch. 68 on the issuance, renewal, modification, suspension or revocation of a permit; a requirement for cooperative issuance of a single permit if more than one county or municipality has jurisdiction over the nonmetallic mining site; a requirement for issuance of a single permit for all nonmetallic mining sites operated by the same person in a county or municipality, with nonmetallic mining sites to be added or deleted by permit modification and with separate permit conditions, fees and financial assurance for each nonmetallic mining site; and a requirement that action approving, denying or conditionally approving a permit be taken within 90 days after receipt of the mining operation and mining reclamation plans or, if a public hearing is held, within 60 days after the close of the public hearing.

(e) A provision imposing annual fees as determined by the department for the administration of s. 295.18 and imposing annual fees as determined by the county, city, village or town that shall, as closely as possible, equal the cost of all of the following:

1. The examination and approval of operation plans and nonmetallic mining reclamation plans.

2. The inspection of nonmetallic mining and nonmetallic mining reclamation.

(f) A requirement for an expedited review process if the applicant pays an additional fee as determined by the county, city, village or town under par. (e) or if the applicant requires a permit under this subchapter to perform services under contract with a city, village, town, county or other governmental unit.

(g) A requirement for the operator to provide a bond, deposit of funds, established escrow account, letter of credit, demonstration of financial responsibility by meeting net worth requirements or other form of financial assurance conditioned on the faithful performance of all of the requirements of the nonmetallic mining reclamation ordinance.

(h) Provisions to restrict nonmetallic mining or restrict, regulate or require certain activities in connection with nonmetallic mining or nonmetallic mining reclamation in order to ensure compliance with nonmetallic mining reclamation standards, operation plans, nonmetallic mining reclamation plans, licensing standards, financial assurance requirements and other requirements of the nonmetallic mining reclamation ordinance. These restrictions, regulations and requirements may include requirements for separations between excavations and property boundaries, for depth of excavations and for segregation of topsoil.

(i) A prohibition on nonmetallic mining if a proposed nonmetallic mining site, other than a nonmetallic mining site in existence before the effective date of the ordinance, cannot be reclaimed in compliance with the nonmetallic mining reclamation standards in the ordinance.

(j) Procedures for the issuance and enforcement of compliance orders, suspension orders and termination orders to ensure compliance with nonmetallic mining reclamation standards, operation plans, nonmetallic mining reclamation plans, licensing standards, financial assurance requirements and other provisions of the nonmetallic mining reclamation ordinance.

(k) A provision for penalties consistent with s. 295.19 (3).

(L) Standards and procedures for granting exemptions and variances from the requirements of the nonmetallic mining reclamation ordinance.

**History:** 1995 a. 227 s. 802.

### 295.13 Mandatory enactment and administration of ordinance. (1) MANDATORY ENACTMENT AND ADMINISTRATION OF ORDINANCE.

(a) *Requirement to enact and administer ordinance.* Within 6 months after the effective date of the rules under s. 295.12 (1), each county shall enact a nonmetallic mining reclamation ordinance, the text of which is in strict conformity with the text of the ordinance established under s. 295.12 (1) (d), except as provided in sub. (2). This ordinance may be enacted separately from an ordinance enacted under s. 59.69.

**Note:** Sub. (1) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(2) **PREEXISTING COUNTY ORDINANCES.** Any county with a nonmetallic mining reclamation ordinance in effect on June 1, 1993, may maintain and administer that ordinance if the department reviews the existing ordinance and determines that it is at least as restrictive as the ordinance established under s. 295.12 (1) (d). If the department determines that any part of the existing ordinance is not as restrictive as the ordinance established under s. 295.12 (1) (d), the county may amend the ordinance and submit the amended ordinance to the department for approval. After obtaining the approval of the department under this subsection, the county may not amend the ordinance to make it more restrictive. After obtaining the approval of the department under this subsection, the county may not amend the ordinance to make it

less restrictive than the ordinance established under s. 295.12 (1) (d).

Note: Sub. (2) is shown as affected by two acts of the 1995 legislature and as merged by the revisor under s. 13.93 (2) (c).

(3) **APPLICABILITY OF COUNTY ORDINANCE.** The ordinance under sub. (1) or (2) applies to the entire area of the county, except for cities, villages and towns that enact and administer a nonmetallic mining reclamation ordinance under s. 295.14.

History: 1995 a. 227 s. 803; s. 13.93 (2) (c).

**295.14 Authority to enact and administer ordinance.**

(1) **AUTHORITY TO ENACT AND ADMINISTER ORDINANCE.** A city, village or town may enact and administer a nonmetallic mining reclamation ordinance, the text of which is in strict conformity with the text of the ordinance under s. 295.12 (1) (d). Except as provided in sub. (2), a city, village or town may not administer a nonmetallic mining reclamation ordinance, the text of which is not in strict conformity with the text of the ordinance under s. 295.12 (1) (d).

(2) **PREEXISTING MUNICIPAL ORDINANCES.** A city, village or town with a nonmetallic mining reclamation ordinance in effect on June 1, 1993, may maintain and administer that ordinance if the department reviews the existing ordinance and determines that it is at least as restrictive as the ordinance established under s. 295.12 (1) (d). If the department determines that any part of the existing ordinance is not as restrictive as the ordinance established under s. 295.12 (1) (d), the city, village or town may amend the ordinance and submit the amended ordinance to the department for approval. After obtaining the approval of the department under this subsection, the city, village or town may not amend the ordinance to make it more restrictive. After obtaining the approval of the department under this subsection, the city, village or town may not amend the ordinance to make it less restrictive than the ordinance established under s. 295.12 (1) (d).

History: 1995 a. 227 s. 804.

**295.15 Fees.** A county or a city, village or town with a nonmetallic mining reclamation ordinance shall collect the fee established under s. 295.12 (3) (e) and shall forward the state's portion of the fee to the department within 90 days after collecting the fee. A county or a city, village or town with a nonmetallic mining reclamation ordinance shall use the revenues from its portion of the fees only for the administration of the nonmetallic mining reclamation ordinance.

History: 1995 a. 227 s. 805.

**295.16 Applicability of ordinance and standards.**

(1) **EXISTING NONMETALLIC MINING.** A nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) apply to all portions of a nonmetallic mining site, including unreclaimed portions of a nonmetallic mining site that relate to nonmetallic mining that occurred before the effective date of the ordinance.

(2) **NONMETALLIC MINING IN OR NEAR NAVIGABLE WATERWAYS.** A nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) do not apply to any nonmetallic mining site or portion of a nonmetallic mining site that is subject to permit and reclamation requirements of the department under ss. 30.19, 30.195, 30.20, 30.30 and 30.31.

(3) **PUBLIC NONMETALLIC MINING.** (a) The standards established under s. 295.12 (1) (a) and, except as provided in par. (b), a nonmetallic mining reclamation ordinance apply to nonmetallic mining conducted by or on behalf of the state or a municipality. Notwithstanding s. 13.48 (13), nonmetallic mining operated for the benefit or use of the state or any state agency, board, commission or department shall comply with the permit requirements and nonmetallic mining reclamation standards of any applicable nonmetallic mining reclamation ordinance.

(b) The financial assurance requirements of a nonmetallic mining reclamation ordinance do not apply to nonmetallic mining conducted by the state or a municipality.

(4) **EXEMPT ACTIVITIES.** A nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) do not apply to the following activities:

(a) Excavations or grading by a person solely for domestic or farm use at his or her residence or farm.

(b) Excavations or grading conducted for highway construction purposes within the highway right-of-way.

(c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(d) Excavations for building construction purposes.

(e) Nonmetallic mining sites of less than one acre.

(f) Any mining operation, the reclamation of which is required in a permit obtained under ch. 293.

(g) Any activities conducted at a solid waste or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility under subchs. II to IV of ch. 289 or a hazardous waste disposal facility under ch. 291, but a nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not part of the solid waste or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(h) Nonmetallic mining to obtain stone, soil, sand or gravel for highway and bridge construction if the nonmetallic mining is subject to requirements of the department of transportation concerning the restoration of the nonmetallic mining site.

(i) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from that dredging.

(j) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21.

History: 1995 a. 227 s. 806.

**295.17 Inspection. (1)** An agent of a county, city, village or town that has a valid nonmetallic mining reclamation ordinance may enter a nonmetallic mining site in the performance of his or her official duties at any reasonable time in order to inspect those premises and to ascertain compliance with the nonmetallic mining reclamation ordinance. No person may refuse entry or access to an agent of the county, city, village or town who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with the inspection. The county, city, village or town shall furnish to the operator any report prepared by the county, city, village or town regarding the inspection.

(2) Any duly authorized officer, employe or representative of the department may enter and inspect any property, premises or place on or at which any nonmetallic mining operation is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and chs. 281, 285, 289 to 293 and 299 and rules adopted pursuant thereto. No person may refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection. The department shall furnish to the nonmetallic mining site operator a written report setting forth all observations, relevant information and data which relate to compliance status.

History: 1995 a. 227 s. 808, 995.

**295.18 Department review. (1) REVIEW.** The department shall review the nonmetallic mining reclamation program under this subchapter of each county and each city, village or town that exercises jurisdiction under this subchapter to ascertain compliance with this subchapter and the rules promulgated under this subchapter. This review shall include all of the following:

(a) A performance audit of the nonmetallic mining reclamation program of the county, city, village or town.



(b) Verification, by on-site inspections, of county, city, village or town compliance with this subchapter and rules promulgated under this subchapter.

(c) A written determination by the department, issued every 3 years, of whether or not the county, city, village or town is in compliance with this subchapter and rules promulgated under this subchapter.

(2) **NONCOMPLIANCE; HEARING.** If the department determines under sub. (1) that a county, city, village or town is not in compliance with this subchapter and rules promulgated under this subchapter, the department shall conduct a hearing, after 30 days' notice, in the county, city, village or town. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subchapter and rules promulgated under this subchapter.

(3) **MUNICIPAL NONCOMPLIANCE; CONSEQUENCES.** If the department determines under sub. (2) that a city, village or town is not in compliance with this subchapter and rules promulgated under this subchapter, the city, village or town may not administer the nonmetallic mining reclamation program. The county nonmetallic mining reclamation ordinance applies to that city, village or town and the county shall administer the nonmetallic mining reclamation program in that city, village or town. The city, village or town may apply to the department to resume its authority to administer the nonmetallic mining reclamation program, but not sooner than 3 years after the department issues a decision under sub. (2). The department, after a hearing, may approve the city, village or town request to administer the nonmetallic mining reclamation program if the city, village or town demonstrates the capacity to comply with this subchapter and rules promulgated under this subchapter.

(4) **COUNTY NONCOMPLIANCE; CONSEQUENCES.** If the department determines under sub. (2) that a county is not in compliance with this subchapter and rules promulgated under this subchapter, the department shall administer the nonmetallic mining reclamation program in that county, including the collection of fees, review and approval of plans, inspection of nonmetallic mining sites and enforcement. The county may apply to the department at any time to resume administration of the nonmetallic mining reclamation program. The department, after a hearing, may approve the county request to administer the nonmetallic mining reclamation program if the county demonstrates the capacity to comply with this subchapter and rules promulgated under this subchapter. No city, village or town may enact an ordinance under s. 295.14 during the time that the department administers the nonmetallic mining reclamation program in the county in which the city, village or town is located.

**History:** 1995 a. 227 s. 809.

**295.19 Enforcement; remedies; penalties. (1) ORDERS; ENFORCEMENT.** The governing body of a county, city, village or town that has a valid nonmetallic mining reclamation ordinance, or an agent designated by that governing body, may do any of the following:

(a) Issue a compliance order, suspension order or termination order as authorized in the nonmetallic mining reclamation ordinance.

(b) Modify, suspend or revoke a nonmetallic mining permit as authorized in the nonmetallic mining reclamation ordinance.

(c) Issue a special order directing the immediate cessation of an activity regulated under this subchapter until the necessary plan approval is obtained or until the nonmetallic mining site complies with the nonmetallic mining reclamation ordinance.

(d) Submit orders to abate violations of the nonmetallic mining reclamation ordinance to the district attorney, the corporation counsel, the municipal attorney or the attorney general for enforcement. The district attorney, the corporation counsel, the municipal attorney or the attorney general may enforce those orders.

(2) **DEPARTMENT ORDERS.** The department may issue a special order directing the immediate cessation of an activity regulated under this subchapter until the nonmetallic mining site complies with the nonmetallic mining reclamation standards established under s. 295.12 (1) (a).

(3) **PENALTIES. (a)** Any person who violates the rules promulgated under s. 295.12 (1) (a) or an order issued under sub. (2) may be required to forfeit not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under this subchapter is suspended, stayed or enjoined, this penalty does not accrue.

(b) 1. Except for the violations enumerated in par. (a), any person who violates this subchapter or any rule promulgated or any plan approval, license or special order issued under this subchapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty does not accrue.

2. In addition to the penalties provided under subd. 1., the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subdivision. Ten percent of the money deposited in the general fund that was awarded under this subdivision for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

**History:** 1995 a. 227 s. 810, 995.

**295.20 Preservation of certain nonmetallic mineral deposits. (1) REGISTRATION.** Beginning on June 1, 1994, a landowner may register land owned by that person with each county in which the land is located if the land has an economically viable nonmetallic mineral deposit. The registration shall delineate the nonmetallic mineral deposit and the necessary buffer areas under the nonmetallic mining reclamation ordinance. The landowner, as a condition of registration, shall submit evidence that a notation of the registration has been recorded in the office of the register of deeds in each county in which the nonmetallic mineral deposit or buffer area is located. A registration under this subsection may not be rescinded by the county or the landowner or his or her successors or assigns.

(2) **LIMITATION ON ZONING.** A county, city, village or town may not by zoning, rezoning, granting a variance, or other official action or inaction, permit the erection of permanent structures upon, or otherwise permit the use of, any registered nonmetallic mineral deposit or registered buffer area in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit or maintenance of the buffer area.

(3) **EXCEPTIONS.** Nothing in this section shall be construed to prohibit the following:

(a) A use of land permissible under a zoning ordinance on the day before a mineral deposit or buffer area is registered under sub. (1).

(b) Acquisition of a registered nonmetallic mineral deposit or registered buffer area by a county, city, village or town or other governmental unit for a public purpose if the use of the land does not permanently interfere with the extraction of nonmetallic minerals or maintenance of the buffer area.

**History:** 1995 a. 227 s. 811.

## SUBCHAPTER II

### OIL AND GAS

**295.31 Definitions; oil and gas.** In this subchapter:

(1) "Department" means the department of natural resources.

(2) “Exploration” means the on–site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of searching for oil or gas or establishing the nature and extent of a known oil or gas deposit and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of the definition of exploration, geologic examination does not include drill holes constructed for the purpose of collecting soil samples or for determining geologic information by seismic methods.

(3) “Gas” means naturally occurring gaseous hydrocarbons.

(4) “Oil” means naturally occurring liquid hydrocarbons.

(6) “Principal shareholder” means any person that owns at least 10% of the beneficial interest of another person.

(7) “Production” means the process involved in the extraction of oil or gas for commercial purposes, and the construction of roads, construction, testing and completion of wells and installation and operation of pipelines, tanks and other necessary equipment for that extraction.

(7m) “Other waste” includes all other substances, except industrial wastes, as defined in s. 281.01 (5), and sewage, as defined in s. 281.01 (13), which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(8) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(8m) “Related person” means any person that owns or operates an oil or gas exploration or production site in the United States and that is one of the following when an application for an oil or gas exploration or production license is submitted to the department:

(a) The parent corporation of the applicant.

(b) A person that holds more than a 30% ownership interest in the applicant.

(c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30% ownership interest.

(9) “Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

**History:** 1991 a. 262; 1995 a. 227 s. 813, 995; Stats. 1995 s. 295.31.

**295.33 Oil and gas exploration and production. (1)** No person may engage in the exploration for oil or gas without a license from the department.

(2) No person may engage in the production of oil or gas without a license from the department.

(3) No person may commit waste in the exploration for or in the production of oil or gas.

(4) No person may conduct drilling operations for the exploration for or production of oil or gas from beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes, unless all drilling operations originate from locations above and on the landward side of the ordinary high–water mark and are conducted according to the terms of a written lease obtained from the department under s. 30.20 (2) (b).

(5) No person holding an oil or gas exploration or production license may engage a general contractor or affiliate to operate an oil or gas exploration or production site if the general contractor or affiliate has 2 or more felony convictions for violation of a law for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States within 10 years before the issuance of the person’s license, unless the general contractor or affiliate receives the

department’s approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

**History:** 1991 a. 262; 1995 a. 227 s. 814; Stats. 1995 s. 295.33.

**295.35 Departmental powers and duties; oil and gas.**

(1) The department shall establish a licensing procedure for oil and gas exploration and production in this state. The procedure shall require the applicant to do all of the following:

(a) Submit any information that the department considers necessary to determine whether the applicant is competent to conduct oil and gas exploration, production and site reclamation and to determine whether the requirements of sub. (5) are satisfied.

(b) Submit any information necessary for the department to determine whether the proposed exploration, production and site reclamation will comply with this subchapter and rules promulgated under this subchapter.

(c) Pay fees to cover the costs of plan review and licensing.

(d) File with the department a bond conditioned on the faithful performance of all of the requirements of this subchapter and rules promulgated under this subchapter.

(2) The department shall promulgate rules to protect the waters of the state, air, soil, plants, fish and wildlife from the adverse effects of oil and gas exploration and production, including rules relating to all of the following:

(a) Location, construction, operation and maintenance of wells and ancillary facilities to provide the greatest practicable protection to the environment.

(b) Disposal of waste liquids encountered or produced in oil and gas exploration and production.

(c) Plugging of wells and abandonment and reclamation of well sites and mud pits and all other ancillary facilities to provide long–term environmental protection.

(d) Reclamation of affected land when exploration and production are completed.

(e) Competence of an applicant to conduct oil and gas exploration, production and site reclamation.

(3) The department shall promulgate rules to prevent waste in the exploration for or the production of oil and gas, including rules related to all of the following:

(a) Prevention of the escape of oil or gas from one stratum to another, and water or brine into oil and gas strata.

(b) Prevention of the premature or irregular encroachment of water that reduces the total recovery of oil and gas.

(c) Prevention of fires, explosions, blowouts, seepage or caving.

(d) Secondary recovery methods of oil or gas.

(e) Spacing of wells.

(f) Regulation of well production, including the allocation of allowable production in any field or pool.

(g) Operation of wells with efficient ratios of gas to oil.

(5) The department may not issue a license for oil or gas exploration or production if it finds any of the following:

(a) That the applicant has violated and continues to fail to comply with this subchapter or any rule promulgated under this subchapter.

(b) That the applicant, a principal shareholder of the applicant or a related person has, within 10 years before the application is submitted, forfeited a reclamation bond for oil or gas exploration or production that was posted in accordance with a permit, license or other approval for an oil or gas exploration or production site in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

(c) That the applicant, a related person or an officer or director of the applicant has, within 10 years before the application is submitted, 2 or more felony convictions for violations of laws for the protection of the natural environment arising out of the operation

of an oil or gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person convicted, as part of the sentence or as a condition of probation, to engage in activities to remedy the violation and the person has complied with that order.

2. The person convicted is a related person or an officer or director of the applicant with whom the applicant terminates its relationship.

3. The applicant included in its license application under sub. (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(cm) That the applicant, a related person or an officer or director of the applicant or a related person has, within 10 years before the application is submitted, been required to forfeit more than \$10,000 for a violation of a law for the protection of the natural environment arising out of the operation of an oil and gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person who was required to forfeit more than \$10,000 to engage in activities to remedy the violation and the person has complied with that order.

2. The person who was required to forfeit more than \$10,000 is a related person with whom the applicant has terminated its relationship.

3. The applicant included in the license application a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the forfeiture.

(d) That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim an oil or gas exploration or production site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

(e) That, within 10 years before the application is submitted, a license or other approval for oil or gas exploration or production issued to the applicant or a related person was permanently revoked because of a failure to reclaim an oil or gas exploration or production site in the United States in violation of state or federal law and that failure has not been and is not being remedied.

(6) The department may not deny a license for oil or gas exploration or production under sub. (5) if the person subject to the con-

victions, forfeiture, permanent revocation, bankruptcy or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30% interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy or dissolution.

**History:** 1991 a. 262; 1995 a. 227 s. 815; Stats. 1995 s. 295.35.

**295.37 Penalties; oil and gas. (1)** Any person who makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading in any material respect or who refuses to submit information required by the department under this subchapter may be fined not less than \$1,000 nor more than \$5,000.

(2) Any person who violates this subchapter or any order issued or rule promulgated under this subchapter may be required to forfeit not less than \$1,000 nor more than \$10,000 for each violation. Each day of violation is a separate offense.

(3) (a) If a person makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading and that statement is material to the issuance of an exploration or production license, the department may revoke the license. If a person holding an exploration or production license repeatedly makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading in any material respect or refuses to submit information required by the department under this subchapter, the department may revoke the license.

(b) If a person holding an exploration or production license continues to violate this subchapter after the department has issued an order to cease those violations, the department shall revoke the license.

(4) Any oil or gas produced in violation of this subchapter or any order issued or rule promulgated under this subchapter, or any product manufactured from that oil or gas, is subject to confiscation. The department may seize that oil, gas or products and request the department of justice to commence an action to confiscate the oil, gas or products.

**History:** 1991 a. 262; 1995 a. 227 s. 816; Stats. 1995 s. 295.37.