

## CHAPTER 295

## NONMETALLIC MINING RECLAMATION; OIL AND GAS

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## SUBCHAPTER I

## NONMETALLIC MINING RECLAMATION

**Cross Reference:** See also ch. NR 135, Wis. adm. code.

**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 to achieve a land use specified in an approved nonmetallic mining reclamation plan, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and, if practical, restoration of plant, fish and wildlife habitat.

(5) “Nonmetallic mining refuse” means waste soil, rock, mineral and other natural material resulting from nonmetallic mining. This term does not include marketable by-products resulting directly from or displaced by the nonmetallic mining.

(6) (a) “Nonmetallic mining site” means all of the following, except as provided in par. (b):

1. The location where nonmetallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
3. Areas where nonmetallic mining refuse is deposited.
4. Areas disturbed by activities such as the construction or improvement of private roads or haulageways for nonmetallic mining.
5. Areas where grading or regrading is necessary to conduct nonmetallic mining or to achieve a land use specified in an approved nonmetallic mining reclamation plan.

(b) “Nonmetallic mining site” does not include any area described in par. (a) 1. to 5. that is not used for nonmetallic mining

or for purposes related to nonmetallic mining on or after October 14, 1997.

(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 material to substitute for the topsoil that was removed or disturbed, for the purposes of providing adequate vegetative cover and stabilization of soil conditions to achieve a land use specified in an approved nonmetallic mining reclamation plan.

(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 (1).

**History:** 1995 a. 227 s. 801, 995; 1997 a. 27; 1999 a. 9.

**Cross Reference:** See also s. NR 135.03, Wis. adm. code.

**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 requirements and procedures for the administration of a nonmetallic mining reclamation program by any county, city, village or town.

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

(d) Nonmetallic mining reclamation standards under sub. (1) (a) shall be designed to encourage the development and reclamation of nonmetallic mining sites in existence on October 14, 1997, and shall include requirements necessary to achieve a land use specified in an approved nonmetallic mining reclamation plan, including requirements related to the removal or reuse of nonmetallic mining refuse, removal of roads no longer in use, stabiliza-

tion 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 and, if practical, protection or restoration of plant, fish and wildlife habitat.

(3) PROGRAM REQUIREMENTS. The rules required by sub. (1) (c) shall include all of the following:

(c) A requirement for the operator to submit a nonmetallic mining reclamation plan including maps, information about the nonmetallic mining site, a proposed land use for which the nonmetallic mining site will be rehabilitated after the nonmetallic mining is completed, 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. The reclamation plan shall be designed to ensure successful nonmetallic mining reclamation consistent with the standards under sub. (1) (a), to minimize the costs of nonmetallic mining reclamation and, to the extent practicable, to minimize the area disturbed by nonmetallic mining at one time and provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

(d) A requirement for the operator to obtain a nonmetallic mining reclamation permit in order to engage in nonmetallic mining or in nonmetallic mining reclamation; a requirement for a permit term equal to the period during which nonmetallic mining is conducted; procedures for the issuance, modification, suspension or revocation of the reclamation permit; a requirement for public notice and an opportunity for a public informational hearing before issuance or modification of a reclamation permit for a nonmetallic mine that is not in operation before the date specified under par. (dm); notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), a right for any person who meets the requirements of s. 227.42 (1) to a contested case hearing under s. 68.11 on the issuance, modification or denial of a reclamation permit and for a person holding a reclamation permit to a contested case hearing under s. 68.11 to contest an order issued under s. 295.19 (1); a requirement for cooperative issuance of a single reclamation permit if more than one county or municipality has jurisdiction over the nonmetallic mining site; and a requirement that action approving, denying or conditionally approving a reclamation permit be taken within 90 days after receipt of the reclamation plan or, if a public informational hearing is held, within 60 days after the close of the public hearing.

(de) Except as provided in par. (dm), a prohibition on issuance of a reclamation permit before approval of the nonmetallic mining reclamation plan under par. (c) by the county, city, village or town operating the program.

(dm) A requirement that, when an operator submits an application for a reclamation permit for a nonmetallic mine that is operating before a date specified by the department in the rule, the county, city, village or town issue the permit on the condition that the operator submit a nonmetallic mining reclamation plan under par. (c) that complies with the rules under par. (c) by a deadline established by the county, city, village or town. The deadline shall be from 1 to 3 years after the date of application.

(ds) A requirement that the county, city, village or town issue a reclamation permit on the condition that the operator submit proof of financial responsibility in accordance with par. (c) within a time specified by the rule.

(e) 1. 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:

- a. The examination and approval of nonmetallic mining reclamation plans.
- b. The inspection of nonmetallic mining reclamation.

2. A prohibition on basing the fees under subd. 1. on any portion of a nonmetallic mining site that has been reclaimed when the fees are imposed.

(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 rules promulgated under this section. The rules shall authorize a county, city, village or town to reduce the amount of financial assurance that an operator is required to provide based on nonmetallic mining reclamation that the operator performs while the nonmetallic mine continues to operate.

(h) Provisions to restrict, regulate or require certain activities in connection with nonmetallic mining reclamation in order to ensure compliance with nonmetallic mining reclamation standards, nonmetallic mining reclamation plans, financial assurance requirements and other requirements of the rules promulgated under this section.

(i) A prohibition on nonmetallic mining if a proposed nonmetallic mining site cannot be reclaimed in compliance with the nonmetallic mining reclamation standards under sub. (1) (a).

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

(L) Criteria and procedures for approving alternatives to the requirements of the nonmetallic mining reclamation standards under sub. (1) (a).

**History:** 1995 a. 227 s. 802; 1997 a. 27.

**Cross Reference:** See also ch. NR 135, Wis. adm. code.

### 295.13 Mandatory enactment and administration of ordinance by counties. (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 and begin to administer a nonmetallic mining reclamation ordinance that complies with those rules, except as provided in subs. (2) and (2m). This ordinance may be enacted separately from an ordinance enacted under s. 59.69.

(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 rules under s. 295.12 (1). If the department determines that any part of the existing ordinance is not as restrictive as the rules under s. 295.12 (1), the county may amend the ordinance and submit the amended ordinance to the department for a determination of whether the amended ordinance is as restrictive as those rules. After obtaining the determination of the department that an ordinance is as restrictive as the rules under s. 295.12 (1), the county may not amend the ordinance to make it more restrictive. A county may not amend a nonmetallic mining reclamation ordinance to make it less restrictive than the requirements in the rules under s. 295.12 (1).

(2m) *OPTION FOR CERTAIN COUNTIES.* In a county with a population of 700,000 or more, if every city, village and town that contains a nonmetallic mining site has enacted an ordinance under s. 295.14 by the first day of the 4th month beginning after the effective date of the rules promulgated under s. 295.12 (1), the county is not required to enact an ordinance under this section.

(3) *APPLICABILITY OF COUNTY ORDINANCE.* An 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.

(4) **CREDITING OF FINANCIAL ASSURANCE.** If a nonmetallic mining site is subject to a county ordinance under sub. (1) or (2) and the city, village, or town in which a nonmetallic mining site is located required the operator of the mining site to provide financial assurance for nonmetallic mining reclamation of the nonmetallic mining site, the county shall credit the value of the financial assurance provided to the city, village, or town against the amount of financial assurance that the operator is required to provide under the county ordinance.

**History:** 1995 a. 227 s. 803; 1997 a. 27, 35; 2003 a. 308.

#### **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, that complies with the rules under s. 295.12 (1). Except as provided in sub. (2), a city, village or town may not administer a nonmetallic mining reclamation ordinance that does not comply with the rules under s. 295.12 (1).

(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 rules under s. 295.12 (1). If the department determines that any part of the existing ordinance is not as restrictive as the rules under s. 295.12 (1), the city, village or town may amend the ordinance and submit the amended ordinance to the department for a determination of whether the amended ordinance is as restrictive as those rules. After obtaining the determination of the department that an ordinance is as restrictive as the rules under s. 295.12 (1), the city, village or town may not amend the ordinance to make it more restrictive. A city, village or town may not amend a nonmetallic mining reclamation ordinance to make it less restrictive than the rules under s. 295.12 (1).

**History:** 1995 a. 227 s. 804; 1997 a. 27.

**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 nonmetallic mining reclamation requirements.**

(1) **NONMETALLIC MINING FOR TRANSPORTATION PURPOSES.** (a) Notwithstanding par. (b), any requirements of the department of transportation concerning the restoration of a nonmetallic mining site shall be consistent with the nonmetallic mining reclamation standards established under s. 295.12 (1) (a).

(b) A nonmetallic mining ordinance and the rules promulgated under s. 295.12 (1) do not apply to nonmetallic mining to obtain stone, soil, sand or gravel for the construction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility, if the nonmetallic mining is subject to the requirements of the department of transportation concerning the restoration of the nonmetallic mining site.

(c) The requirements for a nonmetallic mining reclamation plan under s. 295.12 (3) (c), for public notice and an opportunity for a public informational hearing under s. 295.12 (3) (d) and for proof of financial responsibility under s. 295.12 (3) (ds) do not apply to nonmetallic mining to obtain stone, soil, sand or gravel for the construction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility, conducted under contract with a municipality, as defined in s. 299.01 (8), if the contract requires the nonmetallic mining site to be reclaimed

in accordance with the requirements of the department of transportation concerning the restoration of nonmetallic mining sites.

(2) **NONMETALLIC MINING IN OR NEAR NAVIGABLE WATERWAYS.** A nonmetallic mining reclamation ordinance, and requirements of this subchapter other than 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. The nonmetallic mining standards established under s. 295.12 (1) (a) do apply to 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 the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility if the excavation or grading is within the property boundaries of the transportation facility.

(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 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 that are conducted on the property on which the facility is located, 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 on the property on which the solid waste or hazardous waste disposal facility is located such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(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; 1997 a. 27; 1999 a. 9.

**295.17 Inspection.** (1) An agent of a county, city, village or town that has a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14 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 this subchapter. 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, employee 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; 1997 a. 27.

**295.18 Department review.** (1) REVIEW. The department shall periodically 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 at least once every 10 years, of whether 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 notify the county, city, village or town of that determination. If the department decides to pursue the matter, it 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 issues a written decision 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, except that the department may not administer the nonmetallic mining reclamation program in a city, village or town that enacted an ordinance that complies with s. 295.14 before the department made its determination under sub. (2) and is administering that ordinance. 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 for and begin to implement a nonmetallic mining reclamation program 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; 1997 a. 27.

**295.19 Enforcement; remedies; penalties.** (1) ORDERS; ENFORCEMENT. The governing body of a county, city, village or town that has a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14, or an agent designated by that governing body, may do any of the following:

(a) Issue an order requiring an operator to comply with, or to cease violating, this subchapter, rules promulgated under this subchapter, the nonmetallic mining reclamation ordinance, a nonmetallic mining reclamation permit or an approved nonmetallic mining reclamation plan.

(b) Issue an order suspending or revoking a nonmetallic mining reclamation permit as authorized in the nonmetallic mining reclamation ordinance.

(c) Issue an order directing an operator to immediately cease an activity regulated under this subchapter, under rules promulgated under this subchapter or under the nonmetallic mining reclamation ordinance until the necessary nonmetallic mining reclamation plan approval is obtained.

(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 an 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 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 an 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. 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; 1997 a. 27; 2001 a. 109; 2003 a. 309.

**295.20 Preservation of marketable nonmetallic mineral deposits.** (1) REGISTRATION. (a) Beginning on October 14, 1997, a landowner may register land owned by that person under this section if all of the following apply:

1. The land has a marketable nonmetallic mineral deposit, as evidenced by the certification of a professional geologist licensed

under ch. 470 or a professional engineer registered under s. 443.04 and by any other information required under sub. (4).

2. The landowner notifies each county, city, village and town that has authority to zone the land of his or her intent to register the marketable nonmetallic mineral deposit. The notification shall include the evidence required under subd. 1.

3. Nonmetallic mining is a permitted or conditional use for the land that is proposed to be registered under any zoning that is in effect on the day on which the landowner makes the notification under subd. 2.

(b) A governmental unit that receives notification under par. (a) 2. may contest registration under this subsection, in the circuit court for a county in which the land is located, on the grounds that there is not a marketable nonmetallic mineral deposit on the land or that par. (a) 3. is not satisfied. The governmental unit has the burden of proving, by a preponderance of the evidence, that one of those grounds exists.

(c) The registration shall delineate the nonmetallic mineral deposit and is valid only if recorded in the office of the register of deeds in each county in which the nonmetallic mineral deposit is located.

(d) Except as provided under sub. (4) (d), a registration under this subsection lasts for 10 years and may be renewed as provided in the rules under sub. (4) (e).

**(1m) PREVIOUSLY REGISTERED DEPOSITS.** Land registered under sub. (1) before October 14, 1997, shall remain registered for 10 years after the initial date of registration. The registration may be renewed as provided under sub. (4) (f).

**(2) LIMITATION ON ZONING.** (a) 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 land, while a registration under this section is in effect for that land, in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit that is located on the land.

(b) 1. A county, city, village or town may enact an ordinance changing the zoning of land that is registered under this section if mining has not begun on any portion of the registered land and the ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning.

2. A zoning change authorized by subd. 1. does not apply to the registered land during the registration period in effect when the zoning ordinance takes effect or during the 10–year renewal period under sub. (4) (e) or (f) if the land is eligible for that renewal.

3. A zoning change authorized by subd. 1. prevents the registration of the land after the period under subd. 2.

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

(a) A use of land permissible under a zoning ordinance in effect on the day before a mineral deposit 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.

**(4) RULES.** The department shall promulgate rules that contain all of the following:

(a) A definition of “marketable nonmetallic mineral deposit”.

(b) Procedures and requirements for registering land containing a marketable nonmetallic mineral deposit under sub. (1).

(c) Procedures and criteria for objecting to the proposed registration of land containing a nonmetallic mineral deposit.

(d) Procedures for terminating the registration of land under this section when there is no longer a marketable nonmetallic mineral deposit on the land.

(e) Procedures and criteria for renewing the registration of land under sub. (1). The rules shall allow renewal for one 10–year period without review of the marketability of the deposit or the

zoning of the land, except that, if mining has begun on any portion of the registered land, the rules shall allow the person to renew the registration for an unlimited number of 10–year periods as long as active mining continues.

(f) Procedures and criteria for renewing the registration of land under sub. (1m).

(g) Criteria under which contiguous parcels of land owned by the same person and containing the same marketable nonmetallic mineral deposit may be included in one registration.

**History:** 1995 a. 227 s. 811; 1997 a. 27, 300.

## 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 if the drilling extends beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes, notwithstanding 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; 2001 a. 16.

### 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 convictions, 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.