

- 2397

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Create s. 295.16(3)(c), Wis. Stats., as follows:

295.16(3)(c). The requirement for a reclamation plan, public notice and opportunity for a public informational hearing under s. 295.12(3)(d) and the proof of financial responsibility requirement of s. 295.12(3)(ds) does not apply to a borrow site for fill material for a local transportation project if the operator of the site has a contractual obligation with the municipality, as defined in s. 299.01, to reclaim the site in accordance with requirements of the department of transportation.

DATE: April 28, 1999

TO: Sen. James Baumgart  
Rep. Al Ott  
Rebecca Tradewell - LRB

FROM: Kevin Kessler - DNR *Kevin Kessler*

SUBJECT: Nonmetallic Mining Reclamation Amendment

This will confirm our conversations and your request for further documentation regarding a short amendment to s. 295.16(3) being sought by organizations represented by the Nonmetallic Mining Reclamation Technical Advisory Committee (a.k.a. NR 135 TAC). The group seeks the following amendment:

Create s. 295.16(3)(c), Wis. Stats., as follows:

295.16(3)(c). The requirement for a reclamation plan, public notice and opportunity for a public informational hearing under s. 295.12(3)(d) and the proof of financial responsibility requirement of s. 295.12(3)(ds) do not apply to a borrow site for a local transportation project if the site will be reclaimed under a contractual obligation with the municipality, as defined in s. 299.01(5), to reclaim the site in accordance with requirements of the department of transportation.

**Rationale:** Under current law, nonmetallic mining subject to the requirements of the Wisconsin Department of Transportation (WDOT) is exempt from a nonmetallic mining reclamation ordinance and standards. This proposed provision allows the DNR to proceed with administrative rules that provide for an expedited "automatic permit" for certain local transportation projects where WDOT is not involved. If the local transportation project will follow Wisconsin Department of Transportation standard specifications the local nonmetallic mining reclamation regulatory authority would be authorized to grant a permit based on use of those specifications, but without requiring a more specific reclamation plan. The site would still be local regulatory authority's inspection, oversight and annual fees. Rule language that would implement this statutory change is attached.

The agreed to rule language cannot be adopted without a statutory change because with the "automatic permit" proposal, a permit can't automatically be issued within 7 days if there is a right to a public informational hearing as the statute presently requires. Since the subject of these hearings is the reclamation plan the WDOT standard specifications would replace a normal reclamation plan, a hearing in this circumstance doesn't make any sense anyway. In addition, the requirement for financial responsibility isn't necessary in this case because there would already be a contractual obligation to reclaim the site. Therefore, to make the automatic permit compromise viable, a one sentence statutory revision to exempt these local borrow pits from the reclamation plan, public informational hearings and separate financial responsibility.



Background

Chapter NR 135, Wis. Adm. Code, is the proposed the Nonmetallic Mining Reclamation Code required under Chap. 295, Wis. Stats. The Natural Resources Board tabled adoption of the NR 135 Nonmetallic Mining rule at it's September, 1998 meeting due to concerns of the Wisc. Transportation Builders Assoc. (WTBA) regarding borrow pits for local transportation projects. The WTBA wanted local borrow pits to be exempt from NR 135 to avoid delays and transactional costs and to assure a consistent approach with the Department of Transportation administered projects. WTBA advocated that the exemption be allowed under their interpretation of s. 295.16(4)(h), Stats.

DNR did not agree that such projects should be exempt because, in their opinion, there wouldn't be adequate reclamation oversight like there would be when WDOT was involved. DNR was also concerned that such projects shouldn't be exempt from annual fees. Further, DNR did not agree that s. 295.16(4)(h) provided the exemption advocated by WTBA. In DNR's opinion, the statutory interpretation requested by WTBA could mean that any type of project with a contract referencing WDOT standard specifications could be exempt from regulation.

The proposed statutory change represents compromise, concession and consensus by all parties including the WTBA, the counties and towns, the industry, WDOT and DNR.

Timeline: Among the reasons that the parties had wanted to avoid a statutory revision was the inherent delay in the rules process. Counties have 6 months after the effective date of the rule to adopt their ordinances. It's very important to the county zoning administrators that the rules become effective this fall so that the 6-month window for counties to adopt ordinances will occur over the winter, not during a construction season.

Relationship to the Biennial Budget: This one-sentence provision is budgetary in nature because it would preserve in the rules the annual reclamation fees for this type of local transportation project and allow DNR rule adoption to proceed. The annual reclamation fees collected by the regulatory agency include the local share as well as the state share that is forwarded to DNR for statewide program administration.

if questions,  
CALL DOT WHITEHEAD  
266-3707  
6-29-99  
ANNEX  
fill in  
NON-METALLIC  
mining  
pits

## NR 135 Automatic Permit Proposal - 28 April 1999

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1 *Beginning on page 26 of the greensheet package, at the bottom of the page, make the*  
2 *following changes in NR 135.02(3)(j)1.:*

3 1. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction,  
4 reconstruction, maintenance or repair of a highway, railroad, airport, or any other  
5 transportation facility or part thereof, if the nonmetallic mining is conducted at a site  
6 regulated by ch. Trans. 401 and is subject to a cooperative liaison agreement between the  
7 department and the requirements of the department of transportation, shall be exempt from  
8 this chapter, provided that the final land use of such mining sites is consistent with any  
9 applicable zoning requirements concerning the restoration of the nonmetallic mining site.

10 Note: The requirements of the department of transportation concerning the restoration of nonmetallic  
11 mining sites, other than commercial sources, are found in sections 104.9 and 208 of the standard  
12 specifications.

13 *Also, amend NR 135.02(4) as follows:*

14 (4) APPLICABILITY OF RECLAMATION STANDARDS. Notwithstanding sub. (3) (a);  
15 and (b) and (j), the reclamation standards in subch. II shall apply to ~~all~~ the following:

16 (a) Nonmetallic mining at a site or a portion of a site that is subject to permit and  
17 reclamation requirements of the department under s. 30.19, 30.195 or 30.20, Stats., and  
18 complies with ch. NR 340.

19 (b) Excavations subject to the permit and reclamation requirements of s. 30.30 or 30.31,  
20 Stats.

21 ~~(c) Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction,~~  
22 ~~reconstruction, maintenance or repair of a highway, railroad, airport, or any other~~  
23 ~~transportation facility or part thereof, if the nonmetallic mining is conducted at a site~~  
24 ~~regulated by ch. Trans. 401 and is subject to a cooperative liaison agreement between the~~  
25 ~~department and the department of transportation.~~

26 **Note: The permit procedures and requirements of this chapter other than reclamation standards in**  
27 **subch. II would not apply to activities described in this subsection, as they are already regulated by**  
28 **other permits or approvals. However, subch. II reclamation standards would apply to them.**

29 *Also, amend NR 135.03 beginning near the bottom of page 28 of the Green Sheet as follows:*

30 *Create a new NR 135.03(2m) & (17m) and amend (10) to read:*

31 (2m) "Borrow site" means an area outside of a transportation project site from which stone,  
32 soil, sand or gravel is excavated for use at the project site, except the term does not  
33 include commercial sources.

## NR 135 Automatic Permit Proposal - 28 April 1999

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1 (17m) "Quarry" means any open pit where drilling and blasting is required to extract  
2 nonmetallic minerals.

3 (10) "Municipality" means ~~a town, city or village~~ any city, town, village, county, county  
4 utility district, town sanitary district, public inland lake protection and rehabilitation  
5 district or metropolitan sewage district.

6 ***Also, amend NR 135.23 beginning at the bottom of page 46 of the Green Sheet as follows:***

7 ***Amend the title of NR 135.23 to read:***

8 ***NR 135.23 AUTOMATIC PERMITTING AND EXPEDITED PERMIT REVIEW.***

9 ***Create a new NR 135.23(1) entitled "Automatic Permitting of Borrow Sites for Local***  
10 ***Transportation Projects" and renumber and amend the present NR 135.23(1)-(5) as NR***  
11 ***135.23(2)(a)-(e) with (2) entitled "Expedited Permitting " as follows:***

12 ***NR 135.23(1) Automatic Permitting of Borrow Sites for Local Transportation Projects.***

13 ***(a) The regulatory authority shall automatically issue an expedited permit under this***  
14 ***subsection if the borrow site:***

15 ***1. Will be opened and reclaimed under contract with a municipality within a period***  
16 ***not exceeding 36 months;***

17 ***2. Is a nonmetallic mine which is intended to provide fill material or aggregate stone,***  
18 ***soil, sand or gravel for the construction, reconstruction, maintenance or repair of a***  
19 ***highway, railroad, airport facility or other transportation facility under contract with a***  
20 ***municipality;***

21 ***3. Is regulated and will be reclaimed under contract with a municipality in accordance***  
22 ***with the requirements of the department of transportation concerning the restoration***  
23 ***of nonmetallic mining sites;***

24 ***4. Will not be used to supply rock or crushed stone from a consolidated mineral***  
25 ***deposit. Is not a commercial source;***

26 ***5. Will be constructed, operated and reclaimed in accordance with applicable zoning***  
27 ***requirements, if any; and***

28 ***6. Is not otherwise exempt from the requirements of this chapter under s. NR***  
29 ***135.02(3).***

## NR 135 Automatic Permit Proposal - 28 April 1999

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1 (b) The applicant shall notify the regulatory authority of the terms and conditions of the  
2 contract with respect to reclamation of the proposed borrow site .

3 (c) The applicant shall provide evidence to the regulatory authority to show that the  
4 borrow site and its reclamation will comply with applicable zoning requirements, if any.

5 (d) The regulatory authority shall accept the contractual provisions incorporating  
6 requirements of the department of transportation in lieu of a reclamation plan under s. NR  
7 135.19.

8 (e) The regulatory authority shall accept the contractual provisions in lieu of the financial  
9 assurance requirements in NR 135.40.

10 (f) The public notice and hearing provisions of s. NR 135.20 shall not apply to  
11 nonmetallic mining sites that are issued automatic permits under this subsection.

12 **Note: Local public notice and hearing requirements, if any, regarding zoning decisions still apply.**

13 (g) The annual fees under s. NR 135.39 shall apply, however, the regulatory may not  
14 charge a plan review fee or an expedited plan review fee. Notwithstanding s. NR  
15 135.39(4)(b) and (c), the total annual fee including the department share shall not exceed  
16 the amount in Table 3 of s. NR 135.39.

17 (h) The regulatory authority shall issue the automatic permit within 7 days of the receipt  
18 of a complete application.

19 (i) If the borrow site is used to concurrently supply materials for other than the local  
20 transportation project, the automatic permitting in this subsection still applies provided  
21 the site will be reclaimed under a ~~contract~~contractual obligation with the municipality in  
22 accordance with the department of transportation requirements.

23 (j) Notwithstanding s. NR 135.36, the operator of a borrow site under this subsection is  
24 required to submit only the information in an annual report necessary to identify the  
25 borrow site and to determine the applicable annual fee.

### 26 NR 135.23(2) Expedited Permitting.

27 (1a) An applicant may request expedited permit review by proceeding in accordance  
28 with sub. (2b) or (3c).

29 (2b) An applicant may submit a request for expedited review with payment of the fee  
30 required under s. NR 135.39(4). This request shall state the need for expedited review

## NR 135 Automatic Permit Proposal - 28 April 1999

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1 and the date by which the expedited review is requested.

2 (3c) An applicant may submit a request for an expedited review if the applicant requires a  
3 reclamation permit to perform services under contract with a city, village, town, county or  
4 other governmental unit municipality. This request for expedited review shall state the  
5 need for expedited review and shall include a copy of the applicable sections of the  
6 contract and the date by which the expedited review is requested.

7 (4d) Following receipt of a request under this section, the regulatory authority shall  
8 inform the applicant of the estimated date for decision on issuance of the permit. If the  
9 applicant then elects not to proceed with the expedited review, the fee paid pursuant to  
10 sub. (2b) shall be returned.

11 (5e) The expedited review process may not waive the requirements of this subchapter for  
12 public notice and hearing. This section does not impose an obligation upon the regulatory  
13 authority to act upon a permit application under this section by a specific date.

## Baumgart, Jim

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**From:** Kessler, Kevin K  
**Sent:** Tuesday, May 04, 1999 3:39 PM  
**To:** Schoepke, Jeff  
**Cc:** Kluesner, Elizabeth M; Heinen, Elizabeth M; Meyer, George E; Whited, Gary; Baumgart, Jim; Ott, Alvin  
**Subject:** Nonmetallic Mining Legislation

Jeff:

I left you a voice mail indicating that I'd forward the following information on nonmetallic mining. We (i.e. Wisconsin Transportation Builders Assoc., the other involved groups and DNR) need a one-sentence statutory amendment to "fix" the issue that got these rules hung up. This should be non-controversial with support from WTBA, the Towns Assoc., the Counties Assoc., the County Code Administrators, DOT and DNR. It should also be bipartisan. Rep. Al Ott and Sen. Jim Baumgart have the lead. The plan at this point is that Sen. Baumgart will introduce it as a budget amendment in his caucus. It's possible that it may be introduced in the Assembly Republican Caucus as well.

The attachments should be self-explanatory. Let me know if you have questions, want further explanation, or if you have problems opening the attachments. The proposed statutory language is the 2nd paragraph of the first attachment.



135autopermitstat3.do

c



135TACmem3.doc

**Kevin**

KESSLK@DNR.STATE.WI.US (608) 266-5207



DATE: May 6, 1999

TO: NR 135 TAC and Council Members

FROM: Kevin Kessler, DNR

SUBJECT: NR 135 and local borrow pits

As you recall, the Natural Resources Board considered the Nonmetallic Mining Reclamation Code, Chapter NR 135, Wis. Adm. Code, at its September, 1998 meeting but did not adopt the code due to unresolved issues regarding borrow pits for local transportation projects. I am happy to report some major progress on this issue. The attached memo describes a one sentence statutory change that the Department and the Wisconsin Transportation Builders Association are seeking to allow an expedited "automatic permit" using Department of Transportation specifications for these situations. The county or local reclamation authority would retain jurisdiction and inspection authority and would collect the applicable annual fees. We are hoping and anticipating that this amendment will be introduced as a biennial budget amendment and pass as part of the budget.

The attached memo should be self explanatory with regarding the need and rationale for this statutory change. I think this is a good and reasonable compromise on this issue and hope/anticipate that your organizations can give this proposal the unanimous support that it deserves. Also attached is the latest draft proposal for NR 135 language that would implement this provision. If this statutory proposal passed in the budget as anticipated, our timeline would be to try to get back to the Natural Resources Board for adoption of NR 135 by approximately the September, 1999 Board meeting. Assuming that things go well, the rule would become effective by about December or January and counties would have 6 months after that to pass their ordinances. Mine operators would have more 2 months after that to submit permit applications.

Thank you for your patience and support for this program and on this last contentious issue. We'll furnish the NR 135 TAC / Council copies of the proposed final rule and draft "green sheet" package once it's assembled this fall. There'll be an opportunity for further discussion by the TAC / Council before it's presented to the Natural Resources Board at that time if you wish. We are making excellent progress on the model ordinance through a smaller work group and have begun work on a technical guidance handbook as well. We expect to be distributing the proposed model ordinance in the near future.

Please make a special effort to update members of your organizations on our progress. If you need handout materials or a speaker for a meeting, let us know. If you have questions or concerns or need further information, please don't hesitate to contact Tom Portle Dan Graff or me.

Attach.

cc: George Meyer – AD/5

NR 135 TAC 5/3/99



bcc: Paul Heinen – AD/5  
Elizabeth Kluesner – AD?5  
Brian Dranzick – MB/5  
Joe Polasek – MB/5  
Jay Hochmuth – AD/5  
Mary Jo Kopecky – AD/5  
Sue Bangert – WA/3  
Waste Management Team  
Dan Graff – LS/5  
Tom Portle – WA/3

# Joint Finance Vote Report

For: 5/26  
Page 8 o

**FM 931**

## Nonmetallic Mining Reclamation Program Requirements

Motion: FM 931  
Author/Mover Shibilski  
Co-Author/Seconder Burke

Financial none

Description: Exempt nonmetallic mining conducted to obtain stone soil sand or gravel for any transportation facility from the requirements for a reclamation plan.

Burke:	Yes	Shibilski:	Yes	Gard:	No	Duff:	No
Decker:	Yes	Plache:	Yes	Porter:	Yes	Ward:	No
Jauch:	Yes	Cowles:	Yes	Albers:	No	Huber:	Yes
Moore:	Yes	Panzer:	Yes	Kaufert:	Yes	Riley:	Yes
<b>Total Yes:</b>		<b>12</b>		<b>Total No:</b>		<b>4</b>	
				<b>Total Absent:</b>		<b>0</b>	