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MEMORANDUM

TO: Honorable Members of the Senate Committee on Environment and Natural Resources

FROM: Matthew Stohr, Legislative Associate *MS*

DATE: July 10, 2003

SUBJECT: Senate Bill 198

The Wisconsin Counties Association (WCA) has concerns regarding Senate Bill 198, which relates to an exemption from requirements for nonmetallic mining reclamation. Senate Bill 198 (SB 198) exempts from the nonmetallic mining reclamation requirements the removal of soils for the purpose of creating a pond or wetland that has an area of three acres or less.

WCA is concerned with the potential ramifications of SB 198. SB 198 does not put limits on the total area that can be disturbed to create the three acre pond or wetland, nor does it impose a time limit on project completion. In addition, the proposed exemption does not provide criteria to be used by a local authority in determining the primary purpose or intent of a pond excavation.

WCA respectfully requests that the Nonmetallic Mining Advisory Committee, which consists of industry and local government representatives, be permitted to make recommendations regarding the total area, time limit and criteria portions of this bill.

Thank you for considering our comments. Please do not hesitate to contact the WCA office if you have any questions.

**Before the Senate Committee on
Environment and Natural Resources
July 10, 2003**

**Testimony of
The Wisconsin Department of Natural Resources
On
Senate Bill 198**

The Department is appearing today in opposition to proposed SB 198. We believe the legislation is unnecessary and would create inequities in the county/municipal-implemented regulatory framework required by such. I of ch. 295, Stats. and ch. NR 135, Wis. Adm. Code. that applies to nonmetallic mining operations throughout Wisconsin.

This bill would create an additional exemption, s. 295.16 (4) (k), Stats. The bill's exemption would apply to any soil excavation that creates a pond or wetland less than 3 acres. Under this exemption, simply by saying an operation is for the purpose of creating a wildlife pond, an operator could mine a site up to three acres in area and sell or use the material removed for commercial purposes without having to comply with Ch. NR 135.

The proposed exemption to the statewide uniform reclamation standards and the attendant costs associated with compliance with the program would create a competitive advantage for such operators over ones who did not qualify for the exemption, or chose not to seek it. Non-exempt operators would incur the costs of obtaining permits and approvals, developing and implementing reclamation plans to meet NR 135's reclamation standards and securing the necessary financial assurance to assure reclamation is carried out.

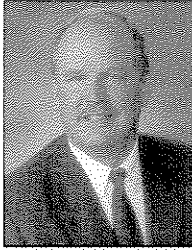
Further, the bill's exemption would cause adverse fiscal impact on county and local programs by depriving them of fees needed to administer their program. County or local program staff would still visit the site to verify the acreage-based exemption, without being able to recoup these costs through

permit fees. By law, fees must equal as closely as possible the costs of mine inspections for permitted mines.

The competitive advantage discussed above is both unfair and is not in keeping with the overarching principle of creating a "level playing field" that was the foundation of the consensus - based NR 135 reclamation rule. The rule-making process involved a wide array of stakeholders and took many years to complete, ultimately resulting in an outcome satisfactory to all parties. Amending it risks undermining the perception of fair regulation for all Wisconsin nonmetallic mine operators under NR 135.

Finally, this issue of pond and wetland excavations was addressed by the Nonmetallic Mining Advisory Committee (NMAC) a 9-member advisory body represented a wide range of interests established under NR 135.51, Wis. Adm. Code, to advise the Department on program administration including any needed changes. This inquiry included hearing testimony from Rep. Sheryl Albers, one of the bill co-sponsors, who was kind enough to speak at the August 1, 2002 NMAC meeting. Upon consideration of all available information, the conclusion of the NMAC was that the issue identified by Rep. Albers was not significant in their respective jurisdictions or to the constituents they represent, so that the proposed legislative exemption was not needed.

The Department shares the NMAC's conclusion. We think the current statutory standard the Legislature has established in s. 295.11(3)(a), Stats., whether an excavation is for extraction of nonmetallic minerals "for sale or use by the operator", is a workable and appropriate legal test to determine where excavations need nonmetallic mining reclamation permits. The Department has produced and shared guidance on this point that includes consideration of wildlife ponds. If isolated problems related to pond or wetland creation exist, the best solution is to address them through local nonmetallic mining reclamation programs and developing and sharing guidance, not through statutory revisions.



DALE W. SCHULTZ
Wisconsin State Senator



July 10, 2003

Senator Neal Kedzie Chair.
and Members
Senate Committee on Environment & Natural Resources
Re: Senate Bill 198

Dear Chairman Kedzie and Members,

Thank you for promptly scheduling a hearing of Senate Bill 198, which would add an exemption to the existing statutes regulating the reclamation of nonmetallic mine sites. Nonmetallic mining is defined as the extraction of substances such as stone, sand, soil and gravel. Current law requires the owner of property to apply for a nonmetallic mining reclamation permit, pay fees, provide a reclamation plan and demonstrate proof of financial responsibility for this type of activity.

Currently s 295.16(4) provides numerous exemptions from the statute including excavations or grading by a person solely for domestic or farm use at his or her residence or farm. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster. Excavations needed for building construction purposes or nonmetallic mining sites that are less than one acre. Mining operations where the reclamation of which is required in a permit obtained under Ch. 293. Activities required preparing, operating or closing a solid or hazardous waste disposal facility. Dredging for navigational purposes, to construct or maintain farm drainage ditches or the remediation of environmental contamination and the disposal of spoils from that dredging and removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under Ch. 30.21.

Senate Bill 198 would add an exemption for the removal of soil when the purpose is to construct a wildlife pond or a wetland that is less than 3 acres in size in "uplands". Currently, any site that is subject to permit and reclamation requirements of the department under Ch. 30 in or near navigable waterways is not required to apply for a reclamation permit under Ch. 295. The pond and wetland sites, which would be covered under this exemption, would be those sites that are not in or near a navigable waterway or "upland sites". We should not expect that when a property owner is willing to create wildlife habitat or wetlands or that they should be required to pay fees, provide a reclamation plan and demonstrate proof of financial responsibility for this type of activity when the removal of soil is secondary to the purpose of the activity. The department does not under normal circumstances require any other permit for wildlife pond or non-navigable wetland construction in areas not covered under Ch. 30.

In the past few days, many legislative offices have been contacted by their County Conservation Staff or Planning and Zoning staff who have expressed concerns about this bill, I would ask that you review the attached Joint Legislative Council Memorandum prepared by Attorney Mark Patronski which clearly indicates that the concerns expressed are unfounded.

In addition at yesterday's hearing in Representative Johnsrud's Environment Committee, the WIDNR offered testimony in opposition to this exemption. The agencies testimony was based on similar concerns as those expressed by the county staff noted above; basically that the agency cannot "trust" what a citizen tells them the excavation is for. I would ask that the members of the committee refer to Attorney Patronski's memorandum (Page 1, Para 4), which states. "The proposed language is clear. The removal of soils must be ""for the purpose of creating a pond or wetland that has an area of 3 acres or less."" The department's testimony also raised concern about a potential loss of revenue to local staff by depriving them of fees needed to administer their program. The departments testimony stated "County or local program staff would still visit the site to verify the acreage based exemption without being able to recoup these costs through permit fees." This statement raises the question, does the county staff now visit each site that is already exempted under s. 295.16(4) to insure that it qualifies for an agriculture based exemption or that the exempted site is in fact under 1 acre as current law allows? If so, fees are not supporting those visits. If not, I would assume that in those cases, they take the word of the citizen as factual.

I respectfully request that the committee give its unanimous support to this important legislation.

With kindest regards



Dale W. Schultz
17th State Senate District

Johnson, Dan (Legislature)

From: David Nashold [DNashold@co.chippewa.wi.us]
Sent: Thursday, July 10, 2003 10:37 AM
To: Sen.Kedzie
Subject: Senate Bill 198

Re: SB 198

July 10, 2003

Dear Senator Kedzie:

I write you as a county staff person responsible for implementing the nonmetallic mining reclamation rules at a local level.

The administrative rule NR135 governing nonmetallic mining reclamation essentially required counties in 2001 to adopt local reclamation ordinances. These ordinances require permitting of nonmetallic mine sites for the purpose of compelling reclamation of these sites.

It is my understanding that SB 198 would create an exemption in statute from permitting for creating ponds or wetlands of less than 3 acres.

I urge caution in pursuing exemptions from the existing requirements. In Chippewa County we have seen very good action by the nonmetallic mining industry to comply with the requirements of our ordinance. I believe the main reason for acceptance of the rule is this that individual operators view the rule to be both necessary and fair. The public expects reclamation of mine sites. At the same time, individual operators do not want any of their competitors to gain unfair advantage. I am concerned that the exemption under consideration would diminish fairness by allowing certain sites to bypass requirements of the rule.

Under current rules many pond and wetland construction activities already do not require permits. Only those sites in which excavation is expressly for producing mineral products are regulated. If a pond or wetland is being constructed by moving soil around the site without a commercial product being produced, no permit is required under the current rule.

If this exemption were to allow commercial extraction of aggregate products it would greatly undercut the fairness inherent in the existing rule - I urge you to reject such an exemption.

If an exemption could be crafted to allow for limited non-commercial excavation, it might be fair and acceptable to both the industry and the regulators at the county level. In any case, I strongly encourage you to involve both the industry and county level staff representatives prior to moving forward with an exemption.

Thank you for considering my testimony.

David Nashold, Engineer - Chippewa County



COLUMBIA COUNTY

Planning & Zoning Department

608-742-9660
FAX: 608-742-9817
E-MAIL: planning.zoning@co.columbia.wi.us
WEBSITE: www.co.columbia.wi.us

400 DeWitt Street
P.O. Box 177
Portage, WI 53901

July 8, 2003

Representative DuWayne Johnsrud, Chair
Assembly Natural Resources Committee
Room 323 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Senator Neal Kedzie, Chair
Senate Environment and Natural Resources Committee
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: AB 411/SB 198, relating to an exemption from requirements for nonmetallic mining reclamation.

Dear Rep. Johnsrud and Senator Kedzie,

I wish to express my concerns about the above bill, which would create an exemption from the nonmetallic mining reclamation requirements for any soil excavation that creates a pond and affects less than three acres in area.

The current exemptions in NR 135 apply to some situations, not including pond construction, where the removal of nonmetallic minerals is clearly incidental to the primary purpose of the excavation. The Department of Natural Resources has supported local interpretation of ordinances to exempt other excavation activities, including pond construction, where the removal of nonmetallic minerals is incidental to the primary purpose of the excavation and where the activity is not specifically exempted by NR 135. This requires, of course, a determination by the local authority as to what the primary purpose or intent is, some of the determining factors being whether a project is government sponsored, financed or supervised, whether removal of nonmetallic minerals is "incidental" to the primary purpose, or the value of such materials in relation to the cost of the project (as a possible indication of the primary intent).

Since the implementation of the nonmetallic mining reclamation program, we have not had any such situations come to our attention in Columbia County. It is certainly possible that some local governments or their consultants may be reluctant to make such determinations and might instead require compliance with NR 135 and local ordinance standards. If it is possible to determine that pond construction is the primary purpose and intent, we are prepared to interpret our ordinance as exempting legitimate pond construction projects from the reclamation standards.

The proposed statutory exemption is flawed in that it provides no means for a local regulatory to address excavations done primarily for mining purposes but where an owner or operator chooses to claim it is a pond

for the sole purpose of escaping the reclamation requirements. The measure could be improved considerably by adding criteria to be used by a local authority in determining the primary purpose or intent.

I would also ask that you consider whether this exemption might be more appropriately inserted in NR 135 rather than in the statutes. The code already contains a list of exemptions and a specific exemption for pond projects could certainly be added to the list.

In summary, I would recommend the following:

1. That the measure not be adopted as written due to the lack of criteria for determining the primary purpose and intent of a "pond" excavation.
2. That the proposal, with appropriate criteria, belongs in Chapter NR 135 and local ordinances rather than in the statutes, and
3. If a code amendment is unacceptable to the legislature, that the measure be adopted only upon the addition of appropriate criteria for determining primary purpose and intent.

Thank you for considering my comments, and please include them in the record for the public hearing on these bills being held on Wednesday, July 9, 2003.

Sincerely,

Michael Stapleton
Zoning Administrator
Columbia County

MS

Cc: John Bluemke, Director of Planning & Zoning
Planning & Zoning Committee
Sen. Robert Welch
Rep. Eugene Hahn
Rep. J.A. Hines

July 8, 2003

Senator Neal Kedzie, Chair
Senate Committee on Environment and Natural Resources
Room 313 South State Capitol
Madison, WI 53707

2003 SENATE BILL 198

Senator Kedzie:

Due to scheduling conflicts, it will not be possible for a representative from Marathon County to attend the July 10, 2003 public hearing on 2003 Senate Bill 198. Please accept the attached comments for consideration by the Senate Committee on Environment and Natural Resources in their deliberation on the bill

Feel free to contact me at (715) 261 6027 if you have any questions.

Justin Cavey
Reclamation Specialist
Marathon County Conservation, Planning & Zoning Department

cc Sen. Cathy Stepp, Vice Chair
Sen. Dave Zien
Sen. Frad Risser
Sen. Robert Wirch

2003 SENATE BILL 198

Background

Subchapter 1 of Chapter 295 of Wisconsin Statutes was created to provide a regulatory framework to insure that areas disturbed by nonmetallic mining would be restored to a stable condition at the end of the mining operation. Section 295.16 outlines the situations where site reclamation under this subchapter is not applicable. Common threads of the activities not regulated under Section 295 are that there is a comparable reclamation standard under another statute or administrative code or that the removal of nonmetallic minerals is secondary to another construction project. Sites which result in less than one acre of disturbance over the life of the mine were thought to be not significant enough to warrant regulation.

Unintended Consequence

Ponds and shallow "scrapes" that result in wetlands are designed by County Land Conservation Departments to intercept runoff from agricultural lands. These excavations trap sediments and nutrients contained in the runoff. The desired end result is a reduction in nonpoint pollution and improved quality of surface waters. Other projects are designed to create or enhance fish or wildlife habitat under the guidance of State or Federal agencies. Typically, these projects are funded by a combination of government grants and landowner's contributions. Landowners use the royalties generated by the sale of surplus topsoil or other nonmetallic minerals generated by the excavation of the ponds or wetlands to fund their portion of the project costs. After the implementation of the Chapter 295 based reclamation ordinances, these projects were regulated as nonmetallic mines if they exceeded one acre in size and nonmetallic minerals were sold or bartered to defray construction costs.

Concerns With Senate Bill 198

As drafted, 2003 Senate Bill 198 would exempt removal of soil for creating a pond or wetland that has an area of 3 acres or less from the reclamation standards. This exemption is significantly different than the other instances where the reclamation regulations do not apply and these differences could serve to undermine the intent of the initial legislation. SB 198 has the following shortcomings:

- There is no limit to the total area that can be disturbed to create the three acre pond or wetland. Individuals wishing to circumvent the reclamation requirement could mine a forty acre hill if the professed end result was a three acre pond.
- There is no limit on the length of time to complete the project.
- The ponds are not subject to standards which will insure safe, stable side slopes or that the wetlands that are created will have any of the functional values of native wetland communities.

To Address The Shortcomings of Senate Bill 198 The Following Should Apply to Exempt Pond or Wetland Projects

- Exempt only pond or wetland construction projects where the total disturbance is less than three acres.
- Limit the time period for exempt pond or wetland projects to one construction season.
- Limit the exemption to ponds or wetlands designed to a State, Federal or County technical standard that includes construction oversight by the agency.

The Preferred Solution

Table Senate Bill 198 in Committee. Include a well thought out pond and wetland exemption, drafted by the Nonmetallic Mining Advisory Committee, in broader trailer legislation that is likely to be drafted in an upcoming legislative session.



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR DALE SCHULTZ

FROM: Mark C. Patronsky, Senior Staff Attorney *MCP*

RE: Response to Comments on 2003 Assembly Bill 411 and Senate Bill 198, Relating to Exemption From Requirements for Nonmetallic Mining Reclamation

DATE: July 8, 2003

This memorandum, prepared at your request, responds to comments submitted by Michael Stapleton, the zoning administrator for Columbia County. The comments pertain to 2003 Assembly Bill 411 and Senate Bill 198, relating to creating a statutory exemption from requirements for nonmetallic mining reclamation. This exemption applies, in the proposed statutory exemption, to "removal of soils for the purpose of creating a pond or wetland that has an area of 3 acres or less." Mr. Stapleton raises several concerns about this exemption.

Mr. Stapleton's concerns about how this exemption would be implemented are well placed. As with most environmental regulatory programs, the Legislature created nonmetallic mining statutes that are relatively brief, and directed the Department of Natural Resources (DNR) to flesh out the regulatory requirements by rule. In the case of nonmetallic mining, a further step in the regulatory process requires local units of government, primarily counties, to issue the permits and make specific permitting and enforcement decisions.

The key question raised by Mr. Stapleton is the potential difficulty in determining whether the excavation is done primarily to create a pond or wetland, or whether the primary purpose is for removal of soil.

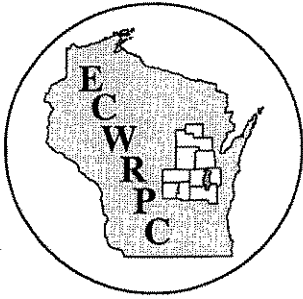
*** The proposed statutory language is clear. The removal of soils must be "for the purpose of creating a pond or wetland that has an area of 3 acres or less." In order to determine the actual purpose, the zoning administrator may look at the kind of effort expended on creating a pond or wetland after the soil is removed. Simply removing the soil, with no further effort to create a pond or wetland, would be evidence that the exemption should not apply.

It is difficult in statutory language to address all possible contingencies. DNR and county staff can address many of these situations by exercising enforcement discretion. If additional clarification is

needed beyond the statutory language, DNR has rule-making authority and can further interpret the statute, although that does not appear to be necessary in these bills.

If I can provide further information or comments on these bills, please feel free to contact me.

MCP:jal



EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION

132 Main Street Menasha Wisconsin 54952-3100 (920) 751-4770 Fax (920) 751-4771
Website: www.eastcentralrpc.org Email: staff@eastcentralrpc.org

*An Economic Development District and Metropolitan Planning Organization
Serving the East Central Wisconsin Region for over 30 years*

July 8, 2003

Representative DuWayne Johnsrud, Chair
Assembly Natural Resources Committee
Room 323 North, State Capitol
P.O. Box 8952
Madison, WI 53708

Senator Neal Kedzie, Chair
Senate Environment and Natural Resources Committee
Room 313 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Re: AB 411/SB 198, relating to an exemption from requirements for nonmetallic mining reclamation.

Dear Rep. Johnsrud and Senator Kedzie:

East Central Planning, as administrator of the NR-135 Non-Metallic Mining Reclamation Ordinances for Calumet, Outagamie, Winnebago, Waupaca, and Shawano Counties, offers these comments regarding the proposed Senate Bill 198 which adds a 'pond exemption' to Wisconsin Administrative Code NR-135. Our staff opposes the proposed change for the following reasons:

1. A lack of discussion and recommendation on this issue from the State's Non-Metallic Mining Advisory Committee. This committee had been charged to develop the original administrative code language and is now charged with monitoring its performance. Such a modification should, at a minimum, be formally discussed and agreed upon by this committee, with input from ALL of the regulatory authorities (i.e., counties, etc.). Even if a modification is approved, it would be more appropriately placed in NR-135, not Chapter 295.
2. The proposed exemption does not foster the 'level-playing field' concept which was originally intended for by Chapter 295 and NR-135 and, as such, will allow for a significant competitive advantage for a sector of the operators who do not have the additional requirements and expenses. Additional expenses for the non-exempted operators will also be incurred since our staff must take time to monitor all exempted sites,
3. For East Central's program, such a change could result in the removal of 43 (out of 206, or 20.8%) of its currently permitted sites. These sites are currently 3 acres or less and, if the operator chose not to expand the sites, they could simply state it was now going to be a pond and is exempt from the requirements. Although the fiscal impacts of this change would not significantly affect our existing program, the potential for negative environmental and social impacts would increase as these sites would not be required to be reclaimed to the same standards as other sites.

Please take these comments, as well as those that I have attached from some of our program counties, into consideration during the public hearing process.

Sincerely,


Eric W. Fowle, AICP
NR-135 Coordinator

Eric Fowle

From: Bob Jacobson [PNDBOB@co.shawano.wi.us]
Sent: Tuesday, July 08, 2003 3:36 PM
To: Eric Fowle
Subject: Re: URGENT!!!! FW: Proposed Exemption from NR135

Hi Eric--I don't have a problem with a wetland exemption of 3 acres or less if the operators are held to some specific design requirements. They should be required to follow NRCS specs for the construction of the wetland. The pond exemption does not sound good. Thanks.

>>> "Eric Fowle" <efowle@eastcentralrpc.org> 07/08/03 03:11PM >>>
To all of EC's NR-135 Program Counties:

Please read the forwarded e-mail and attachment. This comes as a complete surprise to me (us) and I have the same concerns as Mindy on the subject. We, as staff implementing the program, have used internally a 'duration' factor since day one of the program. I personally think a pond could be constructed in a single 'season' or 'year', while a mine would go beyond that. This would effectively allow a number of existing mines, as well as new ones to 'skirt' the regs by claiming that their mine is a pond.

I'm on vacation this Thurs/Fri and can't make the hearings. I am proposing that Scott Konkle attend to bring up our concerns. I assume that our five counties would be against such a change, but please let me know if you support/do not support this change and/or have any other concerns not listed.

If you would like to send me an e-mail voicing your opinion which Scott could then submit at the hearing.

Sorry for the short notice!

- Eric

Eric W. Fowle, AICP
Principal Environmental Planner
East Central Wisconsin Regional Planning Commission
132 Main Street, 3rd Floor
Menasha, Wisconsin 54952
Phone: (920) 751-4770
Fax: (920) 751-4771
E-mail: efowle@eastcentralrpc.org
Web: www.eastcentralrpc.org

-----Original Message-----

From: Manegold, Mindy [mailto:mindy.manegold@co.fond-du-lac.wi.us]
Sent: Tuesday, July 08, 2003 2:51 PM
To: 'Jakubowski, Ryan T'; 'ablackbu@co.pierce.wi.us'; 'abuehler@co.kenosha.wi.us'; 'ahoff@co.monroe.wi.us'; 'Andros@co.dane.wi.us'; Bauer, Christina; Benzschawel, Dave; 'bethk@co.jefferson.wi.us'; 'bob@hobart-wi.org'; 'brazzals@co.portage.wi.us'; 'ctesky@centurytel.net'; 'daschm@co.vilas.wi.us'; 'dferris@sirentel.net'; 'dgraff@co.door.wi.us'; 'dmiller@co.lincoln.wi.us'; 'dnashold@co.chippewa.wi.us'; DNR_WA_MINE_NONMET; Eric Fowle; 'everson.daniel@co.dane.wi.us'; 'franke.donald@co.la-crosse.wi.us'; 'gabe.moody@co.oconto.wi.us'; 'Gaylord.Olson@co.jackson.wi.us'; 'gldjr@town-menasha.com'; 'GTemplin@co.sauk.wi.us'; 'JAN@CENTURYTEL.NET'; 'jforster@dunncounty.net'; 'jlefebvre@marinettecounty.com'; 'juliea@racineco.com'; 'jvcavey@mail.co.marathon.wi.us'; 'kjurcek@northernenvironmental.com'; LaBine, Pam; 'lcdscotts@co.washington.wi.us'; 'lcdtroy@co.washington.wi.us'; 'lclandrr@newnorth.net'; 'LOlson4@co.walworth.wi.us'; 'ltrumble@widarlingt.fsc.usda.gov'; 'mail@highpointrealty.com'; 'markw@co.jefferson.wi.us'; 'mary@hobart-wi.org'; 'mbiller@northernenvironmental.com'; 'mencoinspector@hotmail.com';

Eric Fowle

From: Braun, Bob [BBraun@co.winnebago.wi.us]
Sent: Tuesday, July 08, 2003 4:01 PM
To: Eric Fowle
Subject: RE: URGENT!!!! FW: Proposed Exemption from NR135

Eric:

I would concur with the concerns as stated by Mindy, and would ask that East Central, as the implementation agency for the Winnebago County ordinance, indicate my concern at the hearing. I am in complete agreement that a change of this sort should be initiated, or at the very least reviewed and recommended by the NMAC.

Bob Braun
Winnebago County Zoning Administrator
bbraun@co.winnebago.wi.us

-----Original Message-----

From: Eric Fowle [mailto:efowle@eastcentralrpc.org]
Sent: Tuesday, July 08, 2003 3:35 PM
To: bbraun@co.winnebago.wi.us
Subject: FW: URGENT!!!! FW: Proposed Exemption

from NR135

Importance: High

<< File: SB-198.pdf >>
SECOND TRY!

To all of EC's NR-135 Program Counties:

Please read the forwarded e-mail and attachment. This comes as a complete surprise to me (us) and I have the same concerns as Mindy on the subject. We, as staff implementing the program, have

used

internally a 'duration' factor since day one of the program. I personally think a pond could be constructed in a single 'season' or 'year', while a mine would go beyond that. This would

effectively

allow a number of existing mines, as well as new ones to 'skirt' the regs by claiming that their mine is a pond.

I am

I'm on vacation this Thurs/Fri and can't make the hearings.

proposing that Scott Konkle attend to bring up our concerns. I assume that our five counties would be against such a change, but please let me know if you support/do not support this change and/or have any other concerns not listed.

If you would like to send me an e-mail voicing your opinion which Scott could then submit at the hearing.

Sorry for the short notice!

- Eric

Eric W. Fowle, AICP
Principal Environmental Planner
East Central Wisconsin Regional Planning Commission
132 Main Street, 3rd Floor
Menasha, Wisconsin 54952
Phone: (920) 751-4770

2003 ASSEMBLY BILL 411/SENATE BILL 198

Chapter 295 of Wisconsin Statutes addresses the issues of nonmetallic mining and insures that areas disturbed by nonmetallic mining would be reclaimed/restored to a stable condition after mining activities ceased. Section 295.16 outlines the exemptions to site reclamation. As such, sites where the site disturbance would be kept under one acre in size over the life of the mine were considered too small to warrant regulation

Issues to consider with Assembly Bill 411/Senate Bill 198

As drafted, this bill exempts removal of soils in the creation of a pond or wetland that has an area of 3 acres or less from NR 135 reclamation standards. While there may be some logistic advantages to contractors to support this exemption, the following shortcomings should be considered as well:

- ♦ The bill assigns no limit to total land area that can be disturbed in order to create a pond of less than three acres. A large area could be opened up and "mined" as long as the stated goal was the creation of a pond under three acres in size.
- ♦ There is no limit to the depth that this pond could be excavated to as long as the surface area is under three acres.
- ♦ There is no time limit in which to complete said pond construction. One could open the project and drag it on for years as long as the surface area never exceeded three acres.
- ♦ Regardless of the exemption, regulatory staff will have to monitor and periodically inspect these projects to ensure compliance. As exempted practices, there will be no funds available to offset the required inspections. The burden for this funding will fall on other permitted nonmetallic mining operations, putting them at a fiscal disadvantage.
- ♦ Ponds created under this exemption will not have requirements to maintain safe side slopes and wetlands thus created will not have to meet any native wetland community values.

Recommended course of action

Table Assembly Bill 411/Senate Bill 198 in Committee. Work with the Nonmetallic Mining Advisory Committee to draft a well thought out pond/wetland exemption that addresses the above concerns in a manner that is equitable to business and considerate of the resources available.

Martin A. Zang
Sank Co. Planning & Zoning

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON SENATE BILL 198

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommend introduction and adoption of **LRB a0801/1 to Senate Bill 198**.

VOTE ON MOTION:

YES

NO

Signed:

Date:

Neal J. Kedzie
2/16/04

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommends passage of **Senate Bill 198 as amended**, relating to:

An exemption from requirements for nonmetallic mining reclamation.

VOTE ON MOTION:

YES

NO

Signed:

Date:

Neal J. Kedzie
2/16/04

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON SENATE BILL 198

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommend introduction and adoption of **LRB a0801/1 to Senate Bill 198.**

VOTE ON MOTION:

YES

NO

Signed: Attepp

Date: 2-18-04

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommends passage of **Senate Bill 198 as amended**, relating to:

An exemption from requirements for nonmetallic mining reclamation.

VOTE ON MOTION:

YES

NO

Signed: Attepp

Date: 2-18-04

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON SENATE BILL 198

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommend introduction and adoption of **LRB a0801/1 to Senate Bill 198.**

VOTE ON MOTION:

YES

NO ✓

Signed: Robert W. Wurd

Date: Feb 18, 2004

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommends passage of **Senate Bill 198 as amended**, relating to:

An exemption from requirements for nonmetallic mining reclamation.

VOTE ON MOTION:

YES

NO ✓

Signed: Robert W. Wurd

Date: Feb 18, 2004

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MOTION ON SENATE BILL 198

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommend introduction and adoption of **LRB a0801/1 to Senate Bill 198**.

VOTE ON MOTION:

YES _____

NO

Signed: *John A. Russer*

Date: *2/17/04*

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommends passage of **Senate Bill 198 as amended**, relating to:

An exemption from requirements for nonmetallic mining reclamation.

VOTE ON MOTION:

YES _____

NO

Signed: *John A. Russer*

Date: *2/17/04*

SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

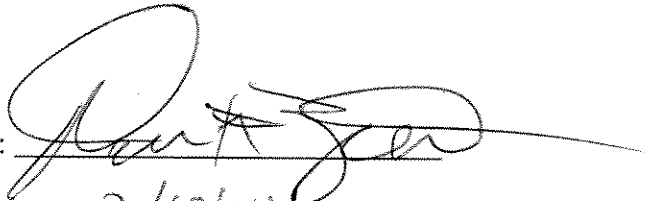
MOTION ON SENATE BILL 198

Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommend introduction and adoption of **LRB a0801/1 to Senate Bill 198**.

VOTE ON MOTION:

YES

NO

Signed: 
Date: 2/18/04

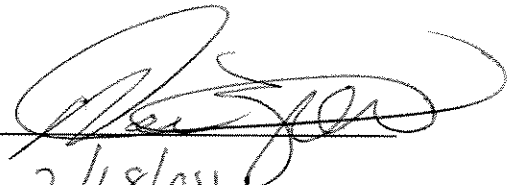
Moved by **Senator Kedzie** that the Senate Committee on Environment and Natural Resources recommends passage of **Senate Bill 198 as amended**, relating to:

An exemption from requirements for nonmetallic mining reclamation.

VOTE ON MOTION:

YES

NO

Signed: 
Date: 2/18/04