

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Laura D. Rose,**  
**Interim Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 00-029**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **1. Statutory Authority**

a. The requirement and authority to regulate nonmetallic mining reclamation at the local level is assigned by ss. 295.13 and 295.14, Stats., to counties, cities, villages and towns. What is the authority to expand the scope of the rule to include special purpose districts, as provided in the definition of “municipality” in s. NR 135.03 (10)?

b. Section NR 135.03 (15), (16) and (21) include language regarding nonmetallic mining refuse and nonmetallic mining sites that does not correspond to the statutory definitions contained in s. 295.11, Stats. For example, see the following phrases:

- (1) In s. NR 135.03 (15), the phrase “that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.”
- (2) In s. NR 135.03 (16) (a), the substitution of the phrase “include, but are not limited to” for the word “means.”
- (3) In s. NR 135.03 (16) (a) 5., the phrase “to assure appropriate final slopes as specified in an approved nonmetallic mining reclamation plan.”
- (4) The entirety of s. NR 135.03 (16) (a) 6.

- (5) In s. NR 135.03 (16) (b) 2., the phrase “and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.”
- (6) In s. NR 135.03 (21), the phrase “unless the reclamation plan approved pursuant to an applicable reclamation ordinance provides otherwise.”

What is the statutory authority for the inclusion of these phrases?

c. The duration of the permit under s. NR 135.27 is the period of the mine’s operation and reclamation. Section 295.12 (3) (d), Stats., provides that the rules must contain “a requirement for a permit term equal to the period during which nonmetallic mining is conducted.” Does the rule reflect the statutory requirement?

## **2. Form, Style and Placement in Administrative Code**

a. The reference to mining sites *in Wisconsin* in s. NR 135.01 (1) (intro.) is unnecessary. The department only has jurisdiction within this state. See also s. NR 135.02 (intro.) and (1) and other provisions of the rule.

b. “Shall apply” should be replaced by “applies” in s. NR 135.02 (1).

c. In s. NR 135.02 (3) (j) 2., the phrase “This exemption” should be replaced by the phrase “The exemption provided in this paragraph.”

d. “Municipality” is defined to include a county in s. NR 135.03 (10). However, many provisions of the rule refer to a municipality where the term is not intended to include counties, such as s. NR 135.17 (2).

e. In s. NR 135.13 (5), the phrase “shall be” should be replaced by the word “is.”

f. In s. NR 135.23 (1) (f), the word “shall” should be replaced by the word “do.”

g. In s. NR 135.40 (3), the phrase “, at its discretion” should be deleted. [See also s. NR 135.21 (1) (c).]

h. In s. NR 135.57 (intro.), the phrase “all of” should be inserted after the word “meeting.”

i. In s. NR 135.62 (4) (b), the first occurrence of the word “may” should be replaced by the word “does.”

j. The defined term “regulatory authority” should be used in s. NR 135.17 (3) (b), and the phrase “county or municipal” should be deleted.

k. The defined term “landowner” should be used in lieu of “persons or organizations who are owners or lessors of the property” in s. NR 135.18 (3) (c). Similarly, the defined term “operator” should be used in ss. NR 135.18 (3) (d) and (e) and 135.19 (6) (a).

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The statutory cross-reference in s. NR 135.03 (2) should be to subch. I. of ch. 295, Stats.

b. In s. NR 135.03 (22), the correct cross-reference is to “s. 254.31 (1),” following the enactment of 1999 Wisconsin Act 9.

c. The cross-references in ss. NR 135.05 (1) and 135.16 merely restate the exceptions in the rule and are superfluous.

d. If possible, the “water quality standards” referenced in s. NR 135.07 should be defined by cross-reference or listed in a note.

e. Section NR 135.08 (2) provides an over-simplified statement of the regulatory effect of the groundwater law.

f. Should the reference to “this chapter” in ss. NR 135.18 (3) (e) and 135.21 (3) be to subch. II of ch. NR 135? Compare to s. NR 135.19 (1).

g. In s. NR 135.22 (1) (b), the appropriate cross-reference is “subch. I of ch. 295, Stats.”

h. Section NR 135.40 (13) (a) should refer to “the definition of ‘company’ in s. NR 289.41 (1) (b).”

i. The cross-reference in s. NR 135.56 (6) is to the old statutory numbering. The current statute is numbered s. 59.41 (1) (a), Stats., and the proper term is “register” of deeds.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The first “a” should be replaced by “an” in s. NR 135.01 (1) (a).

b. The lists of purposes in s. NR 135.01 (1) (a) and (b) and the description of the scope in s. NR 135.01 (2) could be made more readable by separating those provisions into a series of numbered subdivisions.

c. The introductory paragraph in s. NR 135.02 refers to nonmetallic mining sites, but s. NR 135.02 (2) refers to “nonmetallic mining.” These provisions should be harmonized.

d. The reference to “the state of Wisconsin” in s. NR 135.02 (2) should be replaced by “this state.”

- e. “Affect” should be plural in s. NR 135.02 (3) (g) and “of” should be replaced by “in.”
- f. The terms “transportation project site” and “commercial sources” are used in s. NR 135.03 (2m). Should these phrases be defined?
- g. “Activities” at the end of s. NR 135.03 (3) is superfluous because “nonmetallic mining” is a defined term.
- h. The definition of “existing mine” in s. NR 135.03 (7) only requires that nonmetallic mining take place after eight months following the effective date of the rule. Any new mine, in which no mining had taken place prior to that date, would also fit this definition. Is this the intention?
- i. The term “contiguous” is used twice in s. NR 135.03 (16). The meaning of this term is not necessarily clear if, for example, properties are divided by a public right-of-way or properties touch at the corner. This term should be reviewed to be sure that it accomplishes the intent of the rule. Compare to s. NR 135.53 (1).
- j. What is the relationship between s. NR 135.06 (3) and (5)? These provisions appear to overlap.
- k. Section NR 135.20 (1) (b) makes a reference to the official newspaper of the regulatory authority. It is possible that there may not be an official newspaper, and a reference to a newspaper that has general circulation in the regulatory authority should be added.
- l. Section NR 135.21 (1) (b) (intro.) has a time sequence. This kind of provision is more easily understood if it is rewritten as “three years” *after* receipt of the permit.
- m. Section NR 135.23 (1) refers to “automatic permitting” and s. NR 135.23 (2) refers to “expedited permitting,” but s. NR 135.23 (1) (a) (intro.) includes the phrase “expedited permit.” Also, the phrase “automatic permitting” does not appear to be accurate or necessary. Section NR 135.23 (1) (h) requires the permit to be issued within seven days after receipt of a complete application. This defines the time within which the department must issue the permit, and the phrase “automatic permit” is irrelevant. Also, s. NR 135.23 (1) (h) requires issuance of the permit after receipt of a complete application, but s. NR 135.21 requires that a number of conditions be met. Should s. NR 135.23 (1) (h) be modified to state that the conditions in the rule must be met?
- n. In s. NR 135.24 (1), it appears that the phrase “a new” should be inserted before the word “reclamation” in the second sentence.
- o. It would be preferable to substitute “unique” for “peculiar” in s. NR 135.26 (1) (b).
- p. Is the phrase “the intent of” in s. NR 135.26 (3) (b) necessary? Are there any intentions of the chapter that are not reflected in the chapter?
- q. The phrase “issued pursuant to this chapter” in s. NR 135.27 is unnecessary.

r. Section NR 135.29 could be redrafted for clarity. The phrase “until the permit is modified” could be construed to require the new regulatory authority to modify the permit.

s. Section NR 135.32 (3) (b) 1. could be clarified. This provision could be construed as requiring county enforcement only if the county enacts an applicable reclamation ordinance *after* it is determined that the municipality’s program does not comply with the rules.

t. The phrase “to the regulatory authority” in s. NR 135.36 (1) (intro.) should be placed after “report.”

u. Section NR 135.37 should commence: “Each regulatory authority that is a county or municipality shall submit . . . .”

v. The title of s. NR 135.40 (2) describes only the first sentence of that subsection.

w. The title of s. NR 135.43 refers to local order and enforcement but that subsection refers to any regulatory authority, which is defined to include the department. [See also s. NR 135.47. The entire rule should be reviewed to ensure that the use of the term “regulatory authority” is accurate.]

x. Section NR 135.51 (3) should be rewritten in the active voice: “The department shall consult with the nonmetallic mining advisory committee before it may hold a hearing . . . .”

y. The definition of “zoning authority” in s. NR 135.53 (3) refers to an unspecified “other authority which exercises authority to zone the land.” If any other authorities can be identified with specificity, they should be listed in the rule. It is not clear what other authorities have zoning authority.

z. Could the phrase “due to” in s. NR 135.54 be clarified by changing it to “based on”?

aa. In s. NR 135.54, is it necessary that a user of the nonmetallic minerals already exist? Could economic value be adequately demonstrated by proximity to a market for the nonmetallic minerals?

ab. Can the effect of the date in s. NR 135.55 be specified? Obviously, a person may not register land after June 1, 1994, but before the current date if it has not already been registered. Is the effect of this provision to validate registrations prior to the current date?

ac. Some statutes, in addition to permitted or conditional uses, refer to special exceptions and special permits. Should these also be referenced in s. NR 135.56 (3) (a) and (b) and similar provisions of the rule?

ad. There appears to be a word missing in s. NR 135.56 (5). Should “is” be inserted before “binding”?

ae. The term “deed notice” is used in s. NR 135.56 (6) and other places in the rule, but that term is not used in the cross-referenced statute. The subsection should be rewritten in the active voice and the series of events at the beginning of the subsection should be clarified.

af. “Contiguous” at the beginning of s. NR 135.57 (intro.) should be replaced by “multiple.”

ag. Section NR 135.59 (3) (a) allows renewals of registrations and distinguishes between the first renewal and subsequent renewals. The first renewal may be recorded at least 10 days and no more than one year before the registration expires, but subsequent renewals may be made only after the registration has expired. Is this difference intended?