

1983 Assembly Bill 520

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## 1983 Wisconsin Act 176

AN ACT to create 66.038 of the statutes, relating to nonmetallic mining reclamation, authorizing nonmetallic mining reclamation ordinances and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 66.038 of the statutes is created to read:

**66.038 Nonmetallic mining reclamation.** (1) DEFINITIONS. As used in this section:

(a) "Environmental pollution" has the meaning specified under s. 144.01 (3).

(b) "Nonmetallic mining" or "nonmetallic mining operation" means operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates such as stone, sand and gravel and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat and talc, related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering and blending.

(c) "Nonmetallic mining refuse" means waste soil, rock, mineral, liquid, vegetation and other waste material resulting from a nonmetallic mining operation. This term does not include merchantable by-products resulting directly from or displaced by the nonmetallic mining operation.

(d) "Nonmetallic mining site" or "site" means the location where a nonmetallic mining operation is proposed or conducted including all surface areas from which materials are removed, related storage and processing areas, areas where nonmetallic mining refuse is deposited and areas disturbed by the nonmetallic mining operation by activities such as the construction or improvement of roads or haulageways.

(e) "Operator" means any person who is engaged in a nonmetallic mining operation or nonmetallic mining site reclamation or who applies for or holds a nonmetallic mining permit issued under a nonmetallic mining reclamation ordinance whether individually, jointly or through subsidiaries, agents, employes, contractors or subcontractors.

(f) "Reclamation" means the rehabilitation of a nonmetallic mining site including but not limited to removal of nonmetallic mining refuse, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, restoration of plant, fish and wildlife habitat.

(g) "Replacement of topsoil" means the replacement of the topsoil which was removed or disturbed by a nonmetallic mining operation or the provision of soil which is at least as adequate as the topsoil which was removed or disturbed for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

(2) AUTHORITY TO ADOPT ORDINANCE. The governing body of a county, city, village or town may adopt by ordinance regulations for the reclamation of nonmetallic mining sites.

(3) APPLICABILITY OF ORDINANCE. (a) *County ordinances.* 1. Except as provided under subd. 2, a county nonmetallic mining reclamation ordinance is applicable to each town within that county and does not require approval of the town board under s. 59.97 (5) (c).

2. A county nonmetallic mining ordinance is not applicable to a town with a town nonmetallic mining ordinance which is at least as restrictive as the county ordinance.

3. A county nonmetallic mining reclamation ordinance supersedes all less restrictive town nonmetallic mining reclamation ordinances and any less restrictive town nonmetallic mining reclamation ordinance becomes invalid upon the effective date of the superseding county ordinance.

4. A town may not adopt or enforce a less restrictive town nonmetallic mining reclamation ordinance after the effective date of a county nonmetallic mining reclamation ordinance.

(am) *Multiple county mining operations.* A county nonmetallic mining reclamation ordinance is not applicable to a nonmetallic mining reclamation site located in more than one county unless:

1. That nonmetallic mining reclamation ordinance is less restrictive than any other nonmetallic mining reclamation ordinance for a county within which the site is located;

2. No other county within which the site is located has a nonmetallic mining reclamation ordinance; or

3. All counties within which the site is located have nonmetallic mining ordinances which are identical with respect to the site.

(b) *Existing nonmetallic mining operations.* A nonmetallic mining reclamation ordinance may apply to any portion of a nonmetallic mining site, including unreclaimed portions of a site which were mined prior to the effective date of the ordinance.

(c) *Nonmetallic mining in or near navigable waterways.* A nonmetallic mining reclamation ordinance may not apply to any nonmetallic mining site or portion of a site which is subject to permit and reclamation requirements of the department of natural resources under ss. 30.19, 30.195 and 30.20.

(cm) *Nonmetallic mining in connection with highway construction.* A nonmetallic mining reclamation ordinance may apply to a nonmetallic mining operation which is subject to permit and reclamation requirements of the department of transportation. An operator shall comply with both the nonmetallic mining reclamation ordinance and the permit and reclamation requirements of the department of transportation except that if a conflict exists, the operator shall comply with the most restrictive requirement.

(d) *Public nonmetallic mining operations.* A nonmetallic mining reclamation ordinance may not exempt from the permit requirements and reclamation standards a nonmetallic mining operation conducted by or on behalf of the state or a county, city, village or town. Notwithstanding s. 13.48 (13), a nonmetallic mining operation or facility operated or constructed for the benefit or use of the state or any state agency, board, commission or department shall comply with the permit requirements and reclamation standards of any applicable reclamation ordinance. A nonmetallic mining reclamation ordinance may exempt from the financial assurance requirements a nonmetallic mining operation conducted by or on behalf of the state or a county, city, village or town.

(e) *Exempt activities.* A nonmetallic mining reclamation ordinance may not apply to the following activities:

1. Excavations or grading by a person solely for domestic use at his or her residence.

1m. Excavations or grading conducted for highway construction purposes within the highway right-of-way.

2. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.

3. Excavations for building construction purposes.

4. Any mining operation, the reclamation of which is required in a permit obtained under ss. 144.80 to 144.94.

5. Any activities conducted at a solid or hazardous waste disposal site required to prepare, operate or close a solid waste disposal facility under ss. 144.435 to 144.445 or a hazardous waste disposal facility under s. 144.60 to 144.74 but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a nonmetallic mining site separate from the solid or hazardous waste disposal facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(4) CONTENTS OF NONMETALLIC MINING RECLAMATION ORDINANCE. A nonmetallic mining reclamation ordinance may:

(a) *Reclamation standards.* Establish nonmetallic mining site reclamation standards which may be applicable both during nonmetallic mining operations and after the termination of nonmetallic mining operations. A nonmetallic mining reclamation ordinance may establish different nonmetallic mining site reclamation standards for sites which were mined prior to the effective date of the ordinance and for sites which are mined on or after the effective date of the ordinance. These standards may include but are not limited to requirements related to the removal of nonmetallic mining refuse, construction of haulageways and roads, grading of the site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution, construction of fences and, if practical, protection or restoration of plant, fish and wildlife habitat.

(b) *Operation plan.* Require submission of a nonmetallic mining operation plan including maps, information about the site, a description of the proposed nonmetallic mining operation including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining operation.

(c) *Reclamation plan.* Require submission of a nonmetallic mining reclamation plan including maps, information about the site, a description of the proposed reclamation including methods and procedures to be used and a proposed timetable for completion of various stages of the reclamation of the nonmetallic mining site.

(d) *Permit; standards; hearing; inspection; fee.* Require a person to obtain a nonmetallic mining permit in order to engage in nonmetallic mining operations or in reclamation of a nonmetallic mining site, establish standards for the issuance, renewal, modification, suspension or revocation of this permit, require a public hearing prior to issuance or revocation of this permit and charge a nonmetallic mining permit fee sufficient to cover the cost of administering and enforcing the nonmetallic mining reclamation ordinance.

(e) *Financial assurance.* Require a bond, a deposit of funds or other form of financial assurance conditioned on the faithful performance of all of the requirements of the nonmetallic mining reclamation ordinance.

(f) *Restrictions.* Restrict nonmetallic mining operations or restrict, regulate or require certain activities in connection with nonmetallic mining operations or reclamation of a nonmetallic mining site in order to ensure compliance with reclamation standards, operation plans, reclamation plans, licensing standards, financial assurance requirements and other requirements of the nonmetallic mining reclamation ordinance. These restrictions, regulations and requirements may include but are not limited to specifications for separations between excavations and property boundaries, depth of excavations and segregation of topsoil.

(g) *Prohibitions and orders.* Prohibit nonmetallic mining operations if the proposed nonmetallic mining site cannot be reclaimed in compliance with reclamation standards and may provide procedures for the issuance and enforcement of compliance orders, suspension orders and termination orders to ensure compliance with reclamation standards, operation plans, reclamation plans, licensing standards, financial assurance requirements and other provisions of the nonmetallic mining reclamation ordinance.

(h) *Exemptions and variances.* Establish standards and procedures for granting exemptions and variances from the requirements of the nonmetallic mining reclamation ordinance.

(i) *Other provisions.* Contain other provisions not enumerated under pars. (a) to (h) necessary to ensure adequate reclamation of nonmetallic mining sites.

(5) **INSPECTION.** An agent of a county, city, village or town which has a valid nonmetallic mining reclamation ordinance may enter the premises of a nonmetallic mining operation in the performance of his or her official duties by permission of the property owner or operator or pursuant to a special inspection warrant issued under s. 66.122 in order to inspect those premises and to ascertain compliance with the nonmetallic mining reclamation ordinance.

(6) **ENFORCEMENT AND PENALTIES.** The governing body of a county, city, village or town which has a valid nonmetallic mining reclamation ordinance or an agent designated by that governing body may issue a compliance order, suspension order or termination order as authorized in the nonmetallic mining reclamation ordinance as provided under sub. (4) (g) and may suspend or revoke the nonmetallic mining permit as authorized in the nonmetallic mining reclamation ordinance as provided under sub. (4) (d). A nonmetallic mining reclamation ordinance may include a schedule of forfeitures to be imposed for violations of that ordinance.

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