

1993 Assembly Bill 498

Date of enactment: **April 28, 1994**  
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## 1993 WISCONSIN ACT 464

AN ACT to amend 91.75 (9) (a) 1 and 144.03 (2); and to create 15.347 (19), 20.370 (2) (gi), 66.038 (7) and 144.9407 of the statutes, relating to: nonmetallic mining reclamation, creating a nonmetallic mining council, granting rule-making authority, making an appropriation and providing a penalty.

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

**SECTION 1.** 15.347 (19) of the statutes is created to read:

15.347 (19) NONMETALLIC MINING COUNCIL. There is created in the department of natural resources a nonmetallic mining council consisting of 9 members, appointed for 3-year terms, representing economic, scientific and environmental viewpoints and including a representative from businesses that extract nonmetallic minerals, a representative from businesses that use nonmetallic minerals for road building and other purposes and a representative of an organization of persons who administer county zoning ordinances.

**SECTION 2.** 20.370 (2) (gi) of the statutes is created to read:

20.370 (2) (gi) *Mining — nonmetallic mining regulation and administration.* All moneys received under s. 144.9407 for the department's responsibilities related to nonmetallic mining under s. 144.9407.

**SECTION 3.** 66.038 (7) of the statutes is created to read:

66.038 (7) *APPLICABILITY.* This section does not apply after December 31, 1996.

**SECTION 4.** 91.75 (9) (a) 1. of the statutes is amended to read:

91.75 (9) (a) 1. A reclamation plan, submitted as required by a nonmetallic mining reclamation ordinance adopted under s. 66.038 or 144.9407 (3), that fulfills reclamation standards established by the ordinance.

**SECTION 5.** 144.03 (2) of the statutes is amended to read:

144.03 (2) Any duly authorized officer, employe or representative of the department may enter and inspect any property, premises or place on or at which any prospecting or metallic mining operation or facility or 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 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 prospector or operator, as indicated in the prospecting or mining permit, or nonmetallic mining site operator a written report setting forth all observations, relevant information and data which relate to compliance status.

**SECTION 6.** 144.9407 of the statutes is created to read: **144.9407 Nonmetallic mining reclamation. (1)**

DEFINITIONS. In this section:

(a) "Nonmetallic mining" means all of the following:

1. 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.

2. 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.

(b) “Nonmetallic mining reclamation” means the rehabilitation of a nonmetallic mining site, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining 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 where necessary and, if practical, restoration of plant, fish and wildlife habitat.

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

(d) “Nonmetallic mining site” means all of the following:

1. The location where nonmetallic mining is proposed or conducted, including all surface areas from which materials have been or will be removed.

2. Storage and processing areas related to the 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. Buffer areas necessary to assure appropriate final slopes after nonmetallic mining reclamation.

(e) “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.

(f) “Replacement of topsoil” means the replacement of the topsoil that was removed or disturbed by nonmetallic mining, or the provision of soil that is at least as adequate as the topsoil that was removed or disturbed, for the purposes of providing adequate vegetative cover and stabilization of soil conditions.

(2) NONMETALLIC MINING RECLAMATION RULES. (a) *Rules.* The department shall establish all of the following by rule:

1. Uniform statewide standards for nonmetallic mining reclamation.

2. Provisions for the administration of this section by the department.

- 2m. Uniform statewide standards for the administration of a nonmetallic mining reclamation ordinance by any county, city, village or town.

3. The text of a nonmetallic mining reclamation ordinance that conforms with this section.

(am) *Standards.* 1. The department shall establish nonmetallic mining reclamation standards under par. (a) 1. that are applicable both during nonmetallic mining and after the termination of nonmetallic mining.

1m. The department shall include in the standards specific findings regarding the necessity of nonmetallic mining regulation to protect public health, safety and welfare and the environment.

2. The department shall establish different nonmetallic mining reclamation standards and compliance schedules for those portions of a nonmetallic mining site that were mined before the effective date of the ordinance, and those portions of a nonmetallic mining site that are mined on or after the effective date of the ordinance, in order to avoid excessive costs and to encourage the development and reclamation of existing nonmetallic mining sites, to the extent practicable.

3. Standards for those portions of a nonmetallic mining site that are mined on or after the effective date of the ordinance shall include requirements related to the removal or reuse of nonmetallic mining refuse, removal of roads no longer in use, stabilization 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, construction of fences where necessary and, if practical, protection or restoration of plant, fish and wildlife habitat.

4. Standards for those portions of a nonmetallic site that are mined before the effective date of the ordinance shall only include those minimal requirements necessary for the stabilization of soil conditions, establishment of vegetative cover and the prevention of environmental pollution. If additional nonmetallic mining takes place on a portion of a site that was mined before the effective date of the ordinance, that portion of the site shall be subject to the standards under subd. 3 and the remainder of the site shall be subject to this subdivision.

(b) *Text of ordinance.* The text of the nonmetallic mining reclamation ordinance under par. (a) 3. shall include all of the following:

1. Nonmetallic mining reclamation standards that are identical to the standards established under par. (a) 1.

2. A requirement for the operator to submit a nonmetallic mining operation plan including maps, information about the nonmetallic mining site, a description of the proposed nonmetallic mining including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining. The operation plan shall be designed to assure successful nonmetallic mining reclamation consistent with the standards in par. (am) 3 and 4, to minimize the costs of nonmetallic mining reclamation and, to the extent practicable, to minimize the area disturbed by the nonmetallic mining at any time and to provide for continuous nonmetallic mining reclamation. For those portions of a nonme-

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tallic site mined on or after the effective date of the ordinance, the operation plan shall provide for buffer areas on the nonmetallic mining site to assure appropriate final slopes after nonmetallic mining reclamation.

3. A requirement for the operator to submit a nonmetallic mining reclamation plan including maps, information about the nonmetallic mining site, 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.

4. A requirement for the operator to obtain a nonmetallic mining permit in order to engage in nonmetallic mining or in nonmetallic mining reclamation; a requirement for a 5-year permit term unless a shorter permit term is requested by the applicant; standards for the issuance, renewal, modification, suspension or revocation of the permit; a requirement for public notice and an opportunity for a public hearing before issuance, renewal, modification, suspension or revocation of the permit; a requirement to conduct a public hearing on the issuance, renewal or modification of a permit, if requested within 30 days after receipt of the nonmetallic mining operation and reclamation plan; a right for any person who meets the requirements of s. 227.42 (1) to obtain a contested case hearing under ch. 68 on the issuance, renewal, modification, suspension or revocation of a permit; a requirement for cooperative issuance of a single permit if more than one county or municipality has jurisdiction over the nonmetallic mining site; a requirement for issuance of a single permit for all nonmetallic mining sites operated by the same person in a county or municipality, with nonmetallic mining sites to be added or deleted by permit modification and with separate permit conditions, fees and financial assurance for each nonmetallic mining site; and a requirement that action approving, denying or conditionally approving a permit be taken within 90 days after receipt of the mining operation and mining reclamation plans or, if a public hearing is held, within 60 days after the close of the public hearing.

5. A provision imposing annual fees as determined by the department for the administration of sub. (7) 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 operation plans and nonmetallic mining reclamation plans.

b. The inspection of nonmetallic mining and nonmetallic mining reclamation.

5s. A requirement for an expedited review process if the applicant pays an additional fee as determined by the county, city, village or town under subd. 5 or if the applicant requires a permit under this section to perform services under contract with a city, village, town, county or other governmental unit.

6. 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 the nonmetallic mining reclamation ordinance.

7. Provisions to restrict nonmetallic mining or restrict, regulate or require certain activities in connection with nonmetallic mining or nonmetallic mining reclamation in order to ensure compliance with nonmetallic mining reclamation standards, operation plans, nonmetallic mining reclamation plans, licensing standards, financial assurance requirements and other requirements of the nonmetallic mining reclamation ordinance. These restrictions, regulations and requirements may include requirements for separations between excavations and property boundaries, for depth of excavations and for segregation of topsoil.

8. A prohibition on nonmetallic mining if a proposed nonmetallic mining site, other than a nonmetallic mining site in existence before the effective date of the ordinance, cannot be reclaimed in compliance with the nonmetallic mining reclamation standards in the ordinance.

9. Procedures for the issuance and enforcement of compliance orders, suspension orders and termination orders to ensure compliance with nonmetallic mining reclamation standards, operation plans, nonmetallic mining reclamation plans, licensing standards, financial assurance requirements and other provisions of the nonmetallic mining reclamation ordinance.

10. A provision for penalties consistent with sub. (8) (c).

11. Standards and procedures for granting exemptions and variances from the requirements of the nonmetallic mining reclamation ordinance.

(3) MANDATORY ENACTMENT AND ADMINISTRATION OF ORDINANCE. (a) *Requirement to enact and administer ordinance.* Within 6 months after the effective date of the rules under sub. (2) (a), each county shall enact a nonmetallic mining reclamation ordinance, the text of which is in strict conformity with the text of the ordinance established under sub. (2) (a) 3., except as provided in par. (b). This ordinance may be enacted separately from an ordinance enacted under s. 59.97.

(b) *Preexisting county ordinances.* Any county with a nonmetallic mining reclamation ordinance in effect on the 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 ordinance established under sub. (2) (a) 3. If the department determines that any part of the existing ordinance is not as restrictive as the ordinance established under sub. (2) (a) 3., the county may amend the ordinance and submit the amended ordinance to the department for approval. After obtaining the approval of the department under this

paragraph, the county may not amend the ordinance to make it more restrictive. After obtaining the approval of the department under this paragraph, the county may not amend the ordinance to make it less restrictive than the ordinance established under sub. (2) (a) 3.

(c) *Applicability of county ordinance.* The ordinance under par. (a) or (b) applies to the entire area of the county, except for cities, villages and towns that enact and administer a nonmetallic mining reclamation ordinance under sub. (4).

(4) **AUTHORITY TO ENACT AND ADMINISTER ORDINANCE.** (a) *Authority to enact and administer ordinance.* A city, village or town may enact and administer a nonmetallic mining reclamation ordinance, the text of which is in strict conformity with the text of the ordinance under sub. (2) (a) 3. Except as provided in par. (b), a city, village or town may not administer a nonmetallic mining reclamation ordinance, the text of which is not in strict conformity with the text of the ordinance under sub. (2) (a) 3.

(b) *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 ordinance established under sub. (2) (a) 3. If the department determines that any part of the existing ordinance is not as restrictive as the ordinance established under sub. (2) (a) 3., the city, village or town may amend the ordinance and submit the amended ordinance to the department for approval. After obtaining the approval of the department under this paragraph, the city, village or town may not amend the ordinance to make it more restrictive. After obtaining the approval of the department under this paragraph, the city, village or town may not amend the ordinance to make it less restrictive than the ordinance established under sub. (2) (a) 3.

(4m) **FEEES.** A county or a city, village or town with a nonmetallic mining reclamation ordinance shall collect the fee established under sub. (2) (b) 5. 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.

(5) **APPLICABILITY OF ORDINANCE AND STANDARDS.** (a) *Existing nonmetallic mining.* A nonmetallic mining reclamation ordinance and the standards established under sub. (2) (a) 1. apply to all portions of a nonmetallic mining site, including unreclaimed portions of a nonmetallic mining site that relate to nonmetallic mining that occurred before the effective date of the ordinance.

(b) *Nonmetallic mining in or near navigable waters.* A nonmetallic mining reclamation ordinance and the standards established under sub. (2) (a) 1. do not apply to any nonmetallic mining site or portion of a non-

metallic 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.

(d) *Public nonmetallic mining.* 1. The standards established under sub. (2) (a) 1 and, except as provided in subd. 2, 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.

2. The financial assurance requirements of a nonmetallic mining reclamation ordinance do not apply to nonmetallic mining conducted by the state or a municipality.

(e) *Exempt activities.* A nonmetallic mining reclamation ordinance and the standards established under sub. (2) (a) 1. do not apply to the following activities:

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

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

3. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

4. Excavations for building construction purposes.

5. Nonmetallic mining sites of less than one acre.

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

7. Any activities conducted at a solid waste 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 ss. 144.60 to 144.74, but a nonmetallic mining reclamation ordinance and the standards established under sub. (2) (a) 1. apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not part of the solid waste 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.

8. Nonmetallic mining to obtain stone, soil, sand or gravel for highway and bridge construction if the nonmetallic mining is subject to requirements of the department of transportation concerning the restoration of the nonmetallic mining site.

9. 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.

10. Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21.

(6) **INSPECTION.** An agent of a county, city, village or town that has a valid nonmetallic mining reclamation ordinance may enter a nonmetallic mining site in the per-

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formance of his or her official duties at any reasonable time in order to inspect those premises and to ascertain compliance with the nonmetallic mining reclamation ordinance. 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.

(7) DEPARTMENT REVIEW. (a) *Review.* The department shall review the nonmetallic mining reclamation program under this section of each county and each city, village or town that exercises jurisdiction under this section to ascertain compliance with this section and the rules promulgated under this section. This review shall include all of the following:

1. A performance audit of the nonmetallic mining reclamation program of the county, city, village or town.

2. Verification, by on-site inspections, of county, city, village or town compliance with this section and rules promulgated under this section.

3. A written determination by the department, issued every 3 years, of whether or not the county, city, village or town is in compliance with this section and rules promulgated under this section.

(b) *Noncompliance; hearing.* If the department determines under par. (a) that a county, city, village or town is not in compliance with this section and rules promulgated under this section, the department 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 section and rules promulgated under this section.

(c) *Municipal noncompliance; consequences.* If the department determines under par. (b) that a city, village or town is not in compliance with this section and rules promulgated under this section, 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 par. (b). 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 section and rules promulgated under this section.

(d) *County noncompliance; consequences.* If the department determines under par. (b) that a county is not

in compliance with this section and rules promulgated under this section, 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. 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 section and rules promulgated under this section. No city, village or town may enact an ordinance under sub. (4) during the time that the department administers the nonmetallic mining reclamation program in the county in which the city, village or town is located.

(8) ENFORCEMENT; REMEDIES; PENALTIES. (a) *Orders; enforcement.* The governing body of a county, city, village or town that has a valid nonmetallic mining reclamation ordinance, or an agent designated by that governing body, may do any of the following:

1. Issue a compliance order, suspension order or termination order as authorized in the nonmetallic mining reclamation ordinance.

2. Modify, suspend or revoke a nonmetallic mining permit as authorized in the nonmetallic mining reclamation ordinance.

3. Issue a special order directing the immediate cessation of an activity regulated under this section until the necessary plan approval is obtained or until the nonmetallic mining site complies with the nonmetallic mining reclamation ordinance.

4. 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.

(b) *Department orders.* The department may issue a special order directing the immediate cessation of an activity regulated under this section until the nonmetallic mining site complies with the nonmetallic mining reclamation standards established under sub. (2) (a) 1.

(c) *Penalties.* Any person who violates the rules promulgated under sub. (2) (a) 1 or an order issued under par. (b) 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 section is suspended, stayed or enjoined, this penalty does not accrue.

(9) PRESERVATION OF CERTAIN NONMETALLIC MINERAL DEPOSITS. (a) *Registration.* Beginning on June 1, 1994, a landowner may register land owned by that person with each county in which the land is located if the land has an economically viable nonmetallic mineral deposit. The registration shall delineate the nonmetallic mineral

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deposit and the necessary buffer areas under the nonmetallic mining reclamation ordinance. The landowner, as a condition of registration, shall submit evidence that a notation of the registration has been recorded in the office of the register of deeds in each county in which the nonmetallic mineral deposit or buffer area is located. A registration under this paragraph may not be rescinded by the county or the landowner or his or her successors or assigns.

(b) *Limitation on zoning.* 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 registered nonmetallic mineral deposit or registered buffer area in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit or maintenance of the buffer area.

(c) *Exceptions.* Nothing in this subsection shall be construed to prohibit the following:

1. A use of land permissible under a zoning ordinance on the day before a mineral deposit or buffer area is regis-

tered under par. (a).

2. 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 if the use of the land does not permanently interfere with the extraction of nonmetallic minerals or maintenance of the buffer area.

**SECTION 7. Nonstatutory provisions.** (1) The department of natural resources shall submit proposed rules concerning nonmetallic mining reclamation that are required under section 144.9407 (2) (a) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than the first day of the 10th month beginning after the effective date of this subsection.

(2) Notwithstanding the length of terms specified in section 15.347 (19) of the statutes, as created by this act, the terms of the first members of the nonmetallic mining council shall expire as follows:

- (a) Three members on July 1, 1995.
  - (b) Three members on July 1, 1996.
  - (c) Three members on July 1, 1997.
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