

Non-Metallic Mining Advisory Committee
2021 Annual Meeting Minutes
November 11, 2021 9AM-3:00 PM via ZOOM

Attendees:

Member representatives: Bryce Richardson – WLWCA, Adam Tegelman – APW, Bob Servais – WTBA (Road Builders), Clint Weninger – WTBA (Extractions), Kyle Grahn – WMC, Mark Krumenacher – WISA, Jay Zambito Science/Academic (Beloit College)

Members not present: Terry Ochs – WCCA, Bruce Moore – Environmental/ Cultural/Public

Non-Members: Ben Publitz – Eau Claire Co, Caleb Edwards – Green Lake Co, Dustin O’Connel – Yahara, Erin Longmire – APW, Gerry Kokkonen – Jefferson Co, Gina Templin – Sauk Co, Jared Grande – Eau Claire Co, Jared Mader – Marathon Co, Ketty Clow – Chippewa Co, Scott Konkell – ECWRPC.

Public Participants: Chis Hubbuch – WI State Journal, Glory Adams, Linda Zillmer, Mary Jo Bork, Patricia Pople, Steve Hogseth

WDNR: Roberta Walls, Malcolm Gregory, Ben Callan, Craig Sparks, Greg Pils, Lane Loveland, Phil Fauble

1. Welcome, Agenda repair, Housekeeping
Meeting opened with introductions, ZOOM meeting logistics
2. Committee membership
 - a. 2021 Member renewals included: Bryce Richardson, Clint Weninger, and Jay Zambito.
Welcome to new member Bob Servais
 - b. Alternate Members: Terry Ochs for WCCA and Mark Krumenacher for WISA
 - c. 2022 Renewals: Need recommendations from APW, WCCA, and WISA
3. DNR Update
 - a. Reporting Metrics
 - i. Regulatory Authorities: Compiled annual report data for 2020 shows about 2600 issued reclamation permits statewide. Discussion about active acres, reclaimed acres and administrative actions on reclamation across the state.
 - ii. NRB Fee Report: Report was submitted to the NRB in February of 2021 and then provided to NMAC members. The report covered the 5-year period since the last report in 2013. The next fee report is due in 2023. Discussions centered around DNR resources, budgeting, fee schedules, and expenditures.
 - b. Regulatory Authority (RA) Audits
 - i. Audit metrics: Continued pandemic conditions delayed audits in 2021. Results of audits from 2019 and 2021 summarized findings and compliance. Questions centered around how to bring compliance with the financial assurance requirements with the RA’s. Discussion of a certification program for RA’s to achieve included a practical benefit and logistics for providing the resources to develop and maintain a certification program.
 - ii. Backlog: DNR is required to conduct performance audits such that each RA receives an audit every 10 years. The pandemic increased the backlog and is projected to remain high into 2023 and beyond. A discussion of the length of time to conduct an audit included audit stages and hours per audit. An estimate of 1200 hours needed to clear the backlog.

- c. RA Administration
 - i. Turnover: DNR continues to see a high turnover in regulatory staff. As a result, DNR is experiencing a high demand for technical assistance and training.
 - ii. Shift in Administration: There is an observed shift in how counties are administering the reclamation program from a historical single point of contact to a re-organized parsing of duties to balance workload. Implications of this shift are not yet fully understood but may have impacts to resiliency and blending of reclamation with zoning.
- d. Training Webinars: A partnership with WI Land and Water from 2020 continued into 2021 with three recorded webinar sessions. The webinars focused on financial assurance and permit determinations. The recorded sessions were provided to new RA staff as needed. Partnership with WI Land and Water will continue into 2022.
- e. Guidance Document: The reclamation plan guidance document developed in 2002 went through a revision and a public notice of a draft closed in May 2021. A total of 68 comments from 19 individuals were received. Several comments for discussion included Post Mining Land Use, Criteria for Successful Reclamation, and Quantifiable Standards for Revegetation. These subjects and comments will be part of the topical discussion in the afternoon session of the meeting. Input on these topics from NMAC members will be considered when finalizing the document.
- f. Review of Ordinances: Several RA ordinances were reviewed in 2021. Most were part of the audit process, but two non-audit related reviews were done.
 - i. The Town of Saukville proposed adding language to their ordinance to allow for a quarry committee to take up administrative duties. This is not more or less restrictive than NR135.
 - ii. The Chippewa County proposed ordinance changes added clarity and consistency with NR135; However, proposed incorporation of guidance into the ordinance were considered to be more restrictive than NR135. The county's guidance looked to address deficiencies in reclamation plans where Post Mining Land Use, Criteria for Success, and Revegetation Standards were concerned.

Ketty Clow of Chippewa County presented on their guidance. Discussion centered around the timeframe for certifying a reclaimed site and impacts to landowner and operator agreements. Operators may be less inclined to opt for land uses that take longer than most to achieve.

Poll Question #1. In General, would you support formal technical guidance on reclamation measures not provided by statute or code? (similar to technical standards for erosion control)

Results:

NMAC members voted 8 in favor, none opposed, and one other (in favor with caution)

Non-NMAC Members voted 6 in favor, 1 opposed

4. Member Updates

- a. Research Updates – Beloit College
 - i. A slowdown in research due to COVID-19 Pandemic
 - ii. Provided overview of WI ISM Bibliography
 - iii. Presented on paper topic relating to how bedrock may be impacting water quality including industrial sand mine processes in Trempealeau County.
 - 1. This study involved detailed geochemical work on sample cores.
 - 2. Next step for evaluating risk with mining and processing is to know water quality to start and what is in the rock units.
- b. RA Updates
 - i. WL&W – Busy year with quarries. Business appears to be picking back up. NR340 survey sent to RA's and shared results. Discussion in the afternoon to provide more detail.

- ii. WCCA – No Updates, Follow-up included responses to poll questions below.
- c. Industry Updates
 - i. WMC – Industrial sand mining is struggling due to tighter competitive market.
 - ii. APW – Appreciated research presentation, looking forward to outcomes that can lead toward fact sheets and other materials that can be distributed broadly. Looking forward to conversations about regulatory consistency across the state on reclamation measures at the county level as well as with NR340 interactions. APW supports conversations with regard to regulatory changes. Have seen instances where reclamation and conditional use are being treated the same.
 - iii. WTBA, Roads – Generally successful working with county RA’s. In agreement with APW’s comments on regulatory consistency. Wanted to know if Chippewa County’s ordinance amendment was approved (no, and since amended to remove guidance). It’s important to maintain a practical approach to reclamation so operators don’t just keep paying fees to avoid reclamation.
 - iv. WTBA, Extractions – Appreciate research presentation. Provided an historical perspective on the development of NR135 and why performance-based requirements were established. Cautioned folks new to the committee to avoid crossing into zoning with reclamation requirements. In general, the last couple years has been better for road projects than expected and waiting to see how the federal infrastructure bill will impact new projects.
 - v. WISA – Regional dynamics of industry with local sand in Texas continues to impact Wisconsin mines. WISA is working to re-brand as a northern sand group not exclusive to WI. Regulatory focus is currently with the WPDES permit. WISA is planning an in-person conference for February 2022.
- d. Environmental/Public Updates
 - i. Green Fire – No updates, Follow-Up included responses to Poll questions below.

Break for Lunch

5. Topics Discussion

- a. NR135 and NR340 Interactions
 - i. Examples: Discussion and examples of ponds created within 500 feet of a navigable water included jurisdiction determinations between NR135 and NR340 for reclamation. Also discussed single jurisdiction as well as dual jurisdictions.
 - ii. Jurisdiction guidance: Discussed the reference and the role of NR135 regulatory authority. The waterways program makes their determination and anything outside of NR340 is then picked up by NR135.
 - iii. Challenges: Discussion on reclamation requirements between the two codes, inclusion of operational criteria in NR340, and differing financial assurance mechanisms. Further discussion on limitations in Statute 295 preventing NR135 authorities from administering any NR340 requirements.
 - iv. WI Land and Water survey results: County and local authorities have awareness of the NR340 program but lack knowledge on jurisdiction and when an operator needs to get a permit from the DNR.
 - v. Comments and feedback from NMAC members include questions on jurisdictional authority of the waterway program and differing amounts of financial assurance between the two codes. It was also mentioned that it did not make sense to split permitting of a site between two authorities.

b. Reclamation Plans

- i. Post Mining Land Use (PMLU): Discussions centered around what NR135 requires for stated PMLU and can be affected by zoning requirements. Emphasis on the criteria for success and quantifiable standards for revegetation supports that PMLU. Challenges with PMLU of audited plans and assistance provided to RA's were discussed. Examples of plans lacking supporting information in achieving PMLU and consequences to certification and release were presented. Comments received from the public notice of the guidance document offer suggestions on limits to land uses. Current NR135 language does not address these situations.
- ii. Criteria for Success: Discussions of audited plans and requested assistance identified a lack of appropriate criteria for successful reclamation. Left to the authority's discretion only addresses the standards. An example of how one county addressed this with DNR assistance was presented. Demonstration of reclamation in a relatively short timeframe is achievable, but NR135 provisions do not have sideboards to assist the operator or the authority in evaluating the reclaimed site. Comments received from the public notice of the guidance document suggest use of soil testing, metals testing, monitoring periods and realistic criteria for the site.
- iii. Quantifiable Standards for Revegetation: Discussion of audited plans and requested assistance identified a lack of quantifiable standards for revegetation. It was further identified that there was a lack of understanding of the difference between criteria for success and quantifiable standards. The criteria for success are to demonstrate HOW success will be reached, and the quantifiable standards are to demonstrate WHAT the success is measured against. Current language in NR135 does not address this. Comments received from the public notice of the guidance document suggest incorporating soil health, diversity in seed species, toxicity evaluation, and a rating system.

Poll Questions #2 In general, would you support a revision of NR135 reclamation measures to include clarity and technical resources for Post Mining Land Use, Criteria for Success, and Quantifiable Standards for Revegetation?

Results:

NMAC members voted 7 in favor, 2 opposed
Non-NMAC members voted 4 in favor, 1 opposed

Poll Question #3 In general, would you support a revision to NR135 standards? (check all that apply)

- | | |
|--|-------------------------------|
| - revegetation and site stabilization | - topsoil management |
| - assessing completion of successful reclamation | - Topsoil Redistribution |
| - intermittent mining | - Other (enter into chat box) |

Results:

NMAC members voted in favor of:
6 for assessing completion of success
5 for revegetation and site stabilization
4 for intermittent mining
3 for topsoil management
3 for topsoil distribution

Non-NMAC members voted in favor of:
4 for assessing completion of success
4 for revegetation and site stabilization
2 for intermittent mining
None for topsoil management
1 for topsoil distribution

c. Financial Assurance

- i. Current Status: Audit findings have shown that many financial assurance certificates contain expiration dates and were in several cases past expiration by several years.

Discussions included assurances being cancelled without notification, certificates of deposit cashed out when mature and cancellation by the operator without the regulatory authority providing release of obligation.

- ii. Training: Webinar trainings in 2021 included information on financial assurance. This has led to regulatory authorities to review what they have on file and inquire as to ways they can make the financial assurance more secure during the life of the mine.
- iii. Model Contracts: Some examples of contract forms that are used by DNR's waste program and the waterway program were shared with emphasis on language required to meet statute and code languages for the respective programs. Something like this could be developed for an RA to adopt that would address requirements in NR135.40.

Poll Question #4 Would you support the development of model reclamation financial assurance contract form(s) that a bank could accept and meets requirements in NR135.40?

Results:

NMAC members voted 5 in favor, 2 opposed, and 1 other (in favor with caution)

Non-NMAC member voted 3 in favor, 1 opposed

d. Reclamation Permits

- i. Format: Audits since 2019 have shown that reclamation permits are issued under several formats. Some are multipage documents with findings of fact, conditions, and requirements to follow. Some are a simple certificate of issue signed by the RA and to be displayed at the site. Some are issued when the Conditional Use Permit is issued with no other indication or distinction from that permit. Where permits are tied to local zoning, the RA is required to issue a separate reclamation permit, and some have had this non-compliance in repeat audit cycles.
- ii. Conditions: With the exception of the condition of financial assurance, most audited reclamation permits did not contain conditions. Where conditions were provided, there was question as to the applicability to reclamation requirements.
- iii. Model Permit: NR135 outlines the requirements to be met with regard to implementing the reclamation plan, reporting requirements, and required notifications. A model permit can assist RA's with conditions that are within the context of reclamation activities and identify uniform responsibilities of the operator as well as the RA during the permit period.

Poll Question #5 Would you like DNR to provide a model reclamation permit to regulatory authorities?

Results:

NMAC Members voted 5 in favor, 1 opposed, 1 other (in favor with caution)

Non-NMAC members voted 4 in favor, 1 opposed

Poll Question #6 In general, would you support a revision to NR135 permitting and administration? (check all that apply)

- Permit Duration
- Permit Modification
- Operator Annual Reporting
- Fee Assessment
- Financial Assurance Amount
- Financial Assurance Forms
- Department Audit Frequency
- Other (enter into chat box)

Results:

NMAC members voted in favor of:

- 5 for fee assessment
- 3 for financial assurance amount
- 3 for financial assurance forms
- 3 for operator annual reporting
- 3 for permit modifications
- 2 for permit duration
- 2 for department audit frequency

Non-NMAC members voted in favor of:

- 2 for fee assessment
- 2 for financial assurance amount
- 2 for financial assurance forms
- 1 for permit duration
- none for operator annual reporting
- none for permit modifications
- none for department audit frequency

Poll Question #7 Having identified several challenges to meet the needs of regulated entities and the regulatory authorities, what suggestions can you offer on how to address this workload?

Results:

4 NMAC members suggested DNR hire staff and commit to providing additional resources at the state and county level for effective implementation of the program. Prioritization to be done to accommodate existing resources.

3 Non-NMAC members echoed NMAC responses and suggest engaging UW Extension options and other local units of government.

6. Public Input

- a. Scott Konkle – Appreciated the idea of having model forms for financial assurance and a Point of Contact for ch30/NR340 issues.
 - b. Linda Zillmer – Appreciated NMAC being open to public
 - c. Patricia Popple – Appreciated NMAC being open to public
7. Other: None. Thank you to NMAC members, alternates, and public for participation and input on reclamation matters.
8. Meeting adjourned.