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STATE REPRESENTATIVE • 75TH ASSEMBLY DISTRICT

Testimony on Assembly Bill 320 June 13, 2023

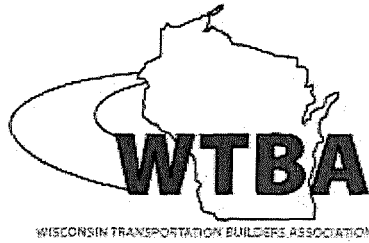
Thank you for the opportunity today to speak on behalf of Assembly Bill 320, which will speed up the permitting process for certain nonmetallic mining activities without sacrificing environmental standards.

Under current law, DNR rules must require mine operators to obtain a reclamation permit from the county or municipality before they may begin nonmetallic mining operations or reclamation efforts. However, certain activities – including the construction of an artificial water body within 500 feet of, but not connected to, an existing navigable water way – require a second reclamation permit from DNR. In cases where such an artificial pond is being built as part of a nonmetallic mining operation, then, the operator must submit reclamation plans to both the relevant local government and to DNR and obtain permits from each. These two tracks operate on different timelines and can result in delay and confusion for the mine operators.

AB 320 simply removes artificial water bodies related to mining operations from the DNR reclamation permitting requirement. They would continue to be subject to local review, as well as subject to the environmental standards laid out in Chapter NR 135 of the Administrative Code. In addition, discharges to the pond from the aggregate washing process will continue to be regulated under a separate WPDES permit issued by DNR.

There are other speakers today who will be able to go into greater detail about how AB 320 will help quarries and the industries that depend on them, so let me just end by saying that this is an opportunity to eliminate a layer of red tape while still protecting the environment.

Thank you for your consideration.



**Assembly Local Government Committee
Testimony in Favor of Assembly Bill 320, June 13, 2023**

Good morning. My name is Jodi Jensen and I am the General Counsel at the Wisconsin Transportation Builders Association. Thank you for the opportunity to speak to you today about Assembly Bill 320. WTBA is a statewide trade association of Wisconsin's heavy highway contractors that participate in the planning, design, construction and maintenance of transportation facilities.

The most common nonmetallic mines are quarries and pits, and construction aggregate is the most common mineral mined. The most widespread need for reliable, sustainable construction aggregate is for road construction and WTBA members include owners and/or operators of quarries or pits where aggregate is mined.

AB 320 will eliminate overlapping state and local mining reclamation requirements which complicate the operation and reclamation of mining sites. Reclamation is the process of rehabilitating a mining site to achieve a specific land use once the mining is complete. All nonmetallic mine operators must obtain a reclamation permit from the local government where the mine is located, referred to in DNR rules as a regulatory authority (RA). Some of those operators must obtain a second reclamation permit from the DNR if an artificial pond is constructed or enlarged within 500 feet of the ordinary high-water mark of a navigable waterway.

AB 320 would require permitting of the entire mining site, including the pond, by the RA. By eliminating the overlapping state permitting requirement, AB 320 will simplify reclamation, maintain existing environmental protections and allow for a comprehensive reclamation plan. Removing DNR's reclamation permitting authority does not eliminate regulation of discharges to the pond during the aggregate washing process. Those activities are regulated under a separate general permit issued under the Wisconsin Pollutant Discharge Elimination System (WPDES) program.

Currently, DNR regulates reclamation of the pond's wetted perimeter and underwater, while the RA regulates reclamation of the rest of the site, including the pond banks. Where the pond ends and the rest of the site begins will evolve over the life of the mine complicating permit applicability. Establishing a full mine reclamation plan is an impossible task under this scenario since DNR issues a three-year permit that is eligible for one five-year extension while RAs issue a 10-year permit that is eligible for 10-year renewals throughout the life of the mine (which is decades). Furthermore, by separating the pond from the rest of the mining site, the pond is excluded from fees assessed by the RA and from annual reports submitted by the operator.

AB 320 will eliminate this complicated and impractical permitting system while maintaining oversight of reclamation by RAs.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.



Assembly Committee on Local Government

2023 Assembly Bill 320

Permits for Constructing or Enlarging Artificial Water Bodies for the Purpose of Nonmetallic Mining Reclamation

June 13, 2023

The Wisconsin Department of Natural Resources (DNR) welcomes the opportunity to provide written testimony on Assembly Bill 320 (AB 320), related to permits for constructing or enlarging artificial water bodies for the purpose of nonmetallic mining (NMM) reclamation and modifying administrative rules promulgated by the Department of Natural Resources.

Wisconsin has a long and proud history of protecting public rights in our public waterways based upon Article IV of the State Constitution. The Wisconsin Supreme Court has broadly defined public rights in public navigable waters to include the rights to boat, swim, fish, and the protection of other incidents of navigation including water quality, water quantity, and natural scenic beauty. The public rights in navigable waters are explicitly protected by state standards in Wis. Stats. Ch. 30 specifying “activities will not be detrimental to the public interest.” These standards are upheld through the DNR waterway permitting process.

Specifically related to this bill, under Wis. Stats. s. 30.19(1g)(am), the construction or enlargement of “any artificial water body that is or will be located within 500 feet of the ordinary high-water mark of, but that does not or will not connect with, an existing navigable waterway...” requires a DNR permit with a few exemptions. Generally, these exemptions include the following:

- Maintenance of existing permitted ponds;
- Construction of stormwater management ponds;
- Agricultural ponds;
- DATCP registered fish farm ponds; and
- Ponds in Milwaukee County.

As part of the DNR’s role in reviewing unconnected NMM ponds permits, the DNR evaluates whether the project will meet the standards set in statute and administrative code. This is especially important for unconnected ponds under conditions where there may be an interchange of surface water between the public navigable water during flood events. State standards include, but are not limited to, the following:

- The activity will not be detrimental to the public interest (s. 30.19(4)(c)1., Wis. Stats). This includes evaluating ponds effects on water quality, water quantity and natural scenic beauty in the adjacent public navigable water.
- The activity will not cause environmental pollution (s. 30.19(4)(c)2., Wis. Stats). This includes evaluating the potential for groundwater and surface water pollution from heavy metals, spills, and mining operations to the adjacent public navigable water.
- The pond will result in no material injury to the riparian rights of any riparian owner of real property that abuts any waterbody that is affected by this activity (s. 30.19(4)(c)4., Wis. Stats.)

- Evaluating the dimensions and depth of the unconnected pond to avoid impacts to public rights in the adjacent public navigable waterway (NR 340.06(3)(a), Wis. Adm. Code).
- Determining the potential for an unconnected pond within the floodplain to entrap fish from the adjacent public waterbody and requiring public access if fish entrapment is likely (NR 340.06(3)(b), Wis. Adm. Code).
- Measures for diversion and drainage of ground and surface water from the site where necessary to prevent pollution of ground or surface water. (NR 340.05(3)(d), Wis. Adm. Code)
- Determining if banks and drainage to navigable waters shall be stabilized prior to and during project operations, and drainages shall be filtered where necessary to prevent siltation and water turbidity (NR 340.06(3)(e), Wis. Adm. Code).
- And other requirements as are necessary, such as incorporation of a buffer zone, to ensure project operations and progressive and final reclamation in a manner consistent with NR 340 and to ensure the prevention of environmental pollution (NR 340.06(3)(g), Wis. Adm. Code).

These standards are meaningful for the protection of public rights in adjacent public navigable waters. Exempting unconnected NMM ponds from complying with these standards and from DNR oversight and enforcement will increase the risks that activities will be detrimental to the public interest in the adjacent public waters. Of special concern is that the permitting process under s. 30.19 Wis. Stats is the only regulatory process for evaluating the potential of these ponds to entrap fish from public waters during flooding events and assessing the effect on natural scenic beauty in the adjacent public water. Additionally, other aspects of surface water, groundwater, and wetland protection would become the responsibility of the counties and municipalities, which could create challenges for consistent, uniformly applied protections of public resources.

The waterways permitting process under Wis. Stats. Ch. 30.19 is streamlined and is completed within a business appropriate timeframe. Department staff recorded issuing 28 NMM pond permits in the last three years, with six of those permits being currently active permits. Processing times for permits ranged from 1 day to 65 days with an average of 35 days.

AB 320 would also shift the workload of financial assurance and reclamation for portions of NMM sites previously permitted by the DNR to the local regulatory authority. While this may cause a temporary increase in workload for the regulatory authority, the DNR recognizes this may be more efficient for NMM operations. The department would welcome the opportunity to work with the authors to move toward a solution that addresses the concerns of the NMM industry, while also ensuring the protection of public rights and public navigable waters.

Given the limited time to review and prepare testimony for today's hearing, the feedback provided in our testimony should be considered preliminary. The department would welcome the opportunity to work with the bill author and impacted stakeholders to clarify legislative intent and to minimize unintended consequences to local Regulatory Authorities.

Thank you for the opportunity to provide this written testimony. If you have questions or if there is any further information the department can provide, please contact Calvin Boldebuck, DNR Legislative Director, at Calvin.Boldebuck@Wisconsin.gov.