

# Nonmetallic Mining Fees

## Report to Natural Resources Board

February 2021

### Introduction

S. NR 135.39(7), Wis. Adm. Code, requires the department to prepare for the Natural Resources Board every five years “a report on whether the nonmetallic mining reclamation revenue, expenditures and fees established by the rule and by other regulatory authorities are reasonable”.

This report summarizes annual fee collections and reclamation program administrative expenses reported during DNR audits, reviews DNR revenue and administrative expenditures and evaluates RA compliance with NR 135 reclamation standards.

In accordance with NR 135 requirements, DNR consulted with the [Nonmetallic Mining Advisory Committee](#) (NMAC) in preparation for this report.

### Nonmetallic Mining & Reclamation Activity: Statewide Trends

This report focuses on reporting years 2014 – 2018. Table 1 summarizes annual RA-reported statewide totals for permitted facilities and open/reclaimed acreage. Noteworthy takeaways include:

- The number of permitted nonmetallic mining facilities peaked at 2900 in 2015
- While the number of facilities decreased by 308, total mined acres increased by 4,841 (+10.5%)
- An average of 839 acres were reclaimed per year (less than 2% of total mined acreage)

**Table 1: Statewide Totals for Reporting Years 2014-2018**

Year	# of RAs Reporting*	# of Permitted Facilities	# Acres Open	# Acres Reclaimed
2014	91	2547	41,157	899
2015	89	2900	43,350	881
2016	90	2561	43,427	692
2017	90	2490	43,007	1374
2018	89	2239	45,998	350

\*99 total RAs (Source: nonmetallic mining annual report submittals)

### Explanation of Fees

[Ch. 295](#), Wis. Stats., requires that county and local government nonmetallic mining reclamation programs be administered in a manner that ensures that uniform reclamation standards are implemented statewide. These programs are funded by annual reclamation fees established by county or local government ordinances and charged to active nonmetallic mining facilities that reflect the reasonable and actual costs of administering the program. These costs include permitting, plan review, administrative, and inspection activities. In addition to administering county and local reclamation programs, a portion of total fee revenues also support DNR oversight and technical support of these programs.

### Role of Regulatory Authorities

Regulatory Authorities (RAs) are county or local units of government that have passed ordinances governing the reclamation of nonmetallic mining sites, as specified under NR 135. They are responsible for collecting fees, reviewing operators’ reclamation plans and permitting and overseeing the reclamation of nonmetallic mining sites within their jurisdiction. The RA transfers a portion of the annual reclamation fees to DNR and provides reports on reclamation activity to the DNR's nonmetallic mining program.

### DNR Performance Audits

Per s. NR 135.47, Wis. Adm. Code, the department is required to audit the nonmetallic mining reclamation program of each RA no less than every 10 years to determine if the program is being conducted in compliance with NR 135, and must provide the RA with a written determination of compliance within 90 days of the audit.

Audits are comprehensive in scope, and, in addition to a comprehensive review of the program’s administrative aspects and compliance with the RA’s reclamation ordinance, also include a review of its methods and effectiveness of fee collection and administrative costs and a determination of if they are reasonable. A general standard for a reasonable fee structure is one that recovers the program’s annual administrative costs without running a total surplus or deficit of more than \$100 per permitted mining facility.

Between 2014 and 2018, DNR conducted 41 RA performance audits as summarized in Table 2:

**Table 2: Regulatory Authority Performance Audits 2014-2018**

Regulatory Authority	Audit Date	Regulatory Authority	Audit Date	Regulatory Authority	Audit Date	Regulatory Authority	Audit Date
<b>Arcadia</b>	06/11/2014	<b>Dodge</b>	08/21/2018	<b>Lafayette</b>	07/20/2016	<b>Rusk</b>	09/06/2018
<b>Ashland</b>	06/21/2016	<b>Forest</b>	07/14/2015	<b>Madison</b>	08/22/2018	<b>Sauk</b>	05/14/2018
<b>Barron</b>	09/01/2015	<b>Grant</b>	07/10/2014	<b>Manitowoc</b>	04/19/2017	<b>Sawyer</b>	08/08/2014
<b>Bayfield</b>	06/22/2016	<b>Green Lake</b>	06/22/2016	<b>Marathon</b>	11/10/2016	<b>Sussex</b>	05/08/2018
<b>Blair</b>	06/11/2014	<b>Hobart</b>	07/21/2014	<b>Monroe</b>	07/23/2015	<b>Taylor</b>	08/06/2015
<b>Bridgeport</b>	09/10/2014	<b>Independence</b>	08/05/2014	<b>Oconto</b>	07/25/2014	<b>Trempealeau</b>	08/04/2015
<b>Brown</b>	10/10/2016	<b>Jackson Tn.</b>	10/01/2014	<b>Pepin</b>	07/29/2014	<b>Vernon</b>	07/14/2016
<b>Buffalo</b>	09/11/2014	<b>Jefferson</b>	06/15/2016	<b>Portage</b>	09/07/2016	<b>Waupaca</b>	07/06/2016
<b>Burnett</b>	08/06/2014	<b>Kenosha</b>	10/30/2017	<b>Price</b>	05/16/2018	<b>Waushara</b>	08/10/2016
<b>Calumet</b>	07/23/2014	<b>Kewaunee</b>	10/29/2018	<b>Richland</b>	07/16/2015	<b>Whitehall</b>	06/11/2014
						<b>Wood</b>	09/03/2015

Six of these audits were initial performance audits conducted on new reclamation programs, including those implemented by municipalities that had annexed lands containing nonmetallic mines and recently passed a reclamation ordinance. These audits were conducted to help guide program implementation, and fees and expenses were not part of the audit scope.

Another 14 of these audits determined that the RA had not been tracking their reclamation program expenses, which made it impossible to determine if the program was recovering its administrative costs or running a deficit or surplus. This is considered an audit finding, and these 14 RAs are required to begin tracking their program expenses to determine if their current fees are reasonable or if they need to be adjusted.

The remaining 21 audits included a review of program fee revenues and administrative expenses, which are summarized in Table 3:

**Table 3: Regulatory Authority Revenues and Administrative Expenses**

<b>Regulatory Authority (County)</b>	<b>Audit date</b>	<b>Number of Facilities</b>	<b>Total Annual Fees Collected</b>	<b>Total Annual Administrative Expenses</b>	<b>Total Annual Surplus (Deficit)</b>	<b>Surplus (Deficit)/Facility</b>
Barron	09/01/2015	79	\$96,645	\$84,499	\$12,146	\$154
Brown	10/10/2016	14	\$11,360	\$12,459	(\$1,099)	(\$79)
Forest	07/14/2015	20	\$5,949	\$6,830	\$881	\$44
Jefferson	06/15/2016	23	\$10,730	\$12,857	(\$2,127)	(\$92)
Kewaunee	10/29/2018	26	\$15,653	\$16,271	(\$1,511)	(\$58)
Lafayette	07/20/2016	17	\$4,550	\$7,772	(\$3,222)	(\$190)
Madison	08/22/2018	3	\$1,515	\$1,920	(\$405)	(\$135)
Oconto	07/25/2014	59	\$28,710	\$29,217	(\$507)	(\$9)
Pepin	07/29/2014	16	\$4,195	\$1,363	\$2,832	\$177
Portage	09/07/2016	25	\$5,285	\$4,710	\$575	\$23
Price	05/16/2018	51	\$12,954	\$12,193	\$760	\$15
Richland	07/16/2015	20	\$17,150	\$17,125	\$25	\$1
Rusk	09/06/2018	52	\$12,765	\$12,094	\$671	\$13
Sauk	05/14/2018	35	\$32,440	\$39,399	(\$6,959)	(\$199)
Sawyer	08/08/2014	61	\$9,825	\$34,000	(\$24,175)	(\$396)
Sussex	05/08/2018	1	\$2,000	\$2,324	(\$325)	(\$325)
Taylor	08/06/2015	48	\$12,857	\$11,200	\$1,657	\$35
Trempealeau	08/04/2015	27	\$74,476	\$73,247	\$1,229	\$46
Vernon	07/14/2016	47	\$18,555	\$20,074	(\$1,765)	(\$38)
Waushara	08/10/2016	14	\$2,665	\$4,597	(\$1,932)	(\$138)
Wood	09/03/2015	62	\$15,870	\$16,745	(\$875)	(\$14)

Administrative expenses vary between RAs due to several factors. Higher administrative expenses are often due to increased RA engagement with the mining facilities in their program (e.g. assistance, inspections, compliance and enforcement). Counties with a high number of active nonmetallic mines often employ staff dedicated to administering their reclamation programs. Those that do not employ dedicated staff may still incur higher administrative costs associated with contracted 3<sup>rd</sup> party auditors.

Unsurprisingly, lower expenses are often reflective of fewer staff hours allocated to inspections, compliance and enforcement follow up; often because the RA is responsible for fewer mines.

Two of the RAs listed in Table 2 were found to be running either a significant surplus or deficit:

1. Barron County records indicated a revenue surplus of \$12,146 in the 2015 audit year. At the time, the county was in transition with new staff and had adjusted fees to address the workload resulting from increases in the volume of plan modifications they'd received. The county continued to adjust fees in each following year, and from 2016-2018 fee revenues and program expenses were generally balanced with annual surpluses or deficits not exceeding \$100 per mine.
2. Sawyer County's audit indicated a deficit of \$24,175 in the 2014 audit year. Like Barron County, Sawyer County was also in a period of transition, hiring new staff while existing dedicated staff were also applied to the program's expenses. By 2018, the county had reduced the program's deficit to \$9,389 (still greater than \$100/mine), and another fee adjustment in 2020 should make further progress.

Department staff continue to provide RAs with guidance for accurately recording reclamation costs and establishing a fee structure that will fund their reclamation programs without running a substantial surplus or deficit. An assessment of cumulative audit findings for calendar years 2008, 2013 and 2018 shows that while overall performance varies, a majority of RAs administer a reasonable reclamation fee structure:

**Table 4: Summary of Cumulative RA Fee Balances: 2008, 2013 & 2018**

	<b>2008</b>	<b>2013</b>	<b>2018</b>
<b>Total RAs audited</b>	24	39	21
<b># RAs Reporting Surplus &gt; \$100/facility</b>	4 (17%)	3 (8%)	2 (9%)
<b># RAs Reporting Acceptable Balance</b>	12 (50%)	29 (74%)	13 (62%)
<b># RAs Reporting Deficit &gt; \$100/Facility</b>	8 (33%)	7 (18%)	6 (29%)

### **DNR Fee Revenue**

S. 295.15, Wis. Stats, requires RAs to transfer a portion of the fee collected from each nonmetallic mine to DNR for support and oversight of RA reclamation programs. DNR's portion is based on the acreage of the mine as established in s. NR135.39, Wis. Admin. Code, and is deposited to the DNR General Fund, from which an amount sufficient to cover operating expenses is allocated each year to cover DNR audit, inspection, and RA program support costs. Any revenue collected in excess of annual operating expenses remains in the general fund.

DNR nonmetallic mine fee revenue levels have remained relatively constant, while expenses and corresponding year-end balances have varied due to program staffing fluctuations.

Table 5 below summarizes total annual DNR nonmetallic mining fee revenues, program expenditures and year-end balances for fiscal years 2014-2018.

**Table 5: DNR Nonmetallic mining Reclamation Program Revenue and Administration Costs by Year**

<b>Fiscal Year</b>	<b>DNR Fee Revenue</b>	<b>DNR Expenditures</b>	<b>Year-End Balance</b>
2014	\$215,204	\$152,557	\$62,647
2015	\$204,838	\$204,510	\$328
2016	\$210,962	\$160,844	\$50,118
2017	\$218,445	\$146,570	\$71,875
2018	\$214,128	\$101,583	\$112,545

DNR audits continue to demonstrate the need for department oversight of RA reclamation programs to promote consistency and ensure compliance. County or municipal staff who take on the RA role often serve multiple roles beyond nonmetallic mining oversight, including zoning and land conservation duties. Inexperienced RA staff require a substantial amount of training to become proficient, and high turnover rates among county RA staff in recent years have increased requests for DNR assistance.

Going forward, the department will continue to prioritize the allocation of fee revenues to conducting audits, developing and maintaining data management systems, developing program guidance documents and training materials.