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Issue: #127

Date: March 13, 2017



**Town Board and County Board members and other governmental officials have a vested interest in the towns and counties they represent and the economic values of those lands now and in the years to come. It is worth knowing about state statutes that guide the registration of lands for their mineral value. Do you know how many acres of land have been registered in your town or county for the purpose of mining frac sand? What will the economic impact of continued registration of lands over a period of time? Are you and your governmental officials well versed in terms of Subchapter VI-Registration of Marketable Nonmetallic Mineral Deposits? Attorney Elizabeth Feil has written a short white paper on NR 135.53- NR 135.64. You will find it of interest. There may be long term impacts in your town and county; ask your elected and appointed officials**

about how this practice affects frac sand mining in your town or county. Does your town have ordinances that correspond with your comprehensive plan?

## **The Nonmetallic Mineral Deposit Registration Process: Preserving the Mining Rights For Up To 20 Years**

**By Elizabeth Feil**

**In the year 2000, the Wisconsin Department of Natural Resources passed rules creating a registration process for nonmetallic mineral deposits. Essentially, this procedure allows a landowner and mine operator to work together to register a piece of land that is not currently being mined to preserve its eligibility for nonmetallic mining in the future, even if a local governing body later passes new mining restrictions.**

**Here's how it works.**

**Under Wisconsin Administrative Code NR 135.55, a landowner may submit a mineral deposit registration form to the county register of deeds. The registration must include:**

**1 A legal description of the land where the deposit is located.**

**2 A certification from a licensed professional**

**geologist that the land has a “marketable nonmetallic mineral deposit.”**

**3 Evidence that nonmetallic mining “is a permitted or conditional use for the land under existing zoning.” The DNR rules provide that this requirement is satisfied automatically if there is no zoning in effect. If zoning is in effect, the DNR rules suggest submitting a copy of the zoning ordinance.**

**4 A certification by the landowner that the landowner “will not take any action that would permanently interfere with present or future extraction of the nonmetallic mineral deposit for the duration of the registration.”**

**At least 120 days before the registration form is filed with the register of deeds, a copy must be filed with any zoning authority and any municipal regulatory authority. Under NR 135.58, a zoning authority may object to the proposed registration “only if it gives notice of its intent to object and the reasons for its objection no later than 60 days after receiving notice . . .”**

**The zoning authority may only object to the registration on one of two grounds:**

**a) zoning does not permit or conditionally permit**

**nonmetallic mining, or**

**b) there is not a marketable mineral deposit on the land proposed to be registered.**

**The zoning authority may only sustain its objection by filing suite in circuit court within 60 days of filing its objection and by prevailing in court. (NR 135.58.)**

**Unless a zoning authority objects and its objection is affirmed by the circuit court, the mineral deposit may be filed with the register of deeds, and the registration becomes effective. Under NR 135.62 that means:**

**1 The county or municipality may not permit the erection of permanent structures on the land or permit the use of the land in a way that would permanently interfere with the extraction of the mineral deposit.**

**2 If mining has not begun on the land, the county or municipality may rezone the land to “implement a master plan, comprehensive plan or land use plan which has been lawfully adopted by an appropriate governing body at least one year prior to the rezoning.” However, any zoning change to implement a master plan, comprehensive plan or land use plan does not apply to land that has a**

**registered mineral deposit until the end of the mineral deposit registration period.**

**3 The first mineral registration period runs for 10 years. Before it expires, if the land is not currently being mined, the landowner may renew the registration for one additional 10 year term. A zoning authority may not object to the renewal, unless the mineral deposit is no longer marketable. After the first 10-year registration period and the additional 10-year period, the landowner needs to reregister by submitting a new nonmetallic mineral deposit registration.**

**4 If the land is currently being mined, the registration can be renewed indefinitely, as long as the land is being mined.**

**In February 2017, a quick check of Trempealeau County and Chippewa County Register of Deeds offices showed that since 2000, six nonmetallic mineral deposit registrations have been filed in Trempealeau County, and nine registrations have been filed in Chippewa County.**

**These registrations preserve the status quo for the surface land and mineral rights owners, allowing them to apply for mine permits at any time during the registration period, under the zoning regulations in effect at the time the registrations**

were filed. But by preserving the status quo, the registrations significantly limit the ability of zoning authorities to regulate nonmetallic mining on lands with registered deposits during the 10-year registration period or the additional 10-year renewal period.

**Disclaimer: This article is written to provide general information regarding the subject matter covered. It is not designed to provide legal advice and should not be used as a substitute for obtaining advice and counsel from a qualified attorney.**

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*Welcome to the Frac Sand Sentinel, a newsletter highlighting resource links, news media accounts, blog posts, correspondence, observations and opinions gathered regarding local actions on, and impacts of, the developing frac sand mining and processing industries.*

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