

LEGISLATIVE ALERT-QUARRY REGULATIONS IN THE TRANSPORTATION BUDGET?
AGAIN? Local Zoning will be impacted.



*.....keeping watch on
the industry*

Issue:#272

Date: JUNE 10, 2019



**ALERT!
LEGISLATORS
HAVE A WAY OF
SNEAKING IN
ADDITIONAL
VERBAGE
ABOUT EFFORTS**

**THEY WANT TO INTRODUCE IN THE
LEGISLATION THEY CREATE. THEY WRITE IT IN,
KEEP IT FROM THE EYE OF THE PUBLIC AND
THEN QUICKLY PASS IT THOUGH. So while we
may be reading about and seeing the pros and
cons of the TRANSPORTATION BUDGET, read the
remainder that is in that same bill: QUARRIES are
the topic and the effort is to take away local
controls regarding air, water, blasting and
other items from the counties, the towns, the
cities, and other entities that currently have some
obligation to the permitting process including**

zoning at all governmental levels and ask yourself if we all should be concerned. Some of the recommended changes impact the health, safety and welfare of people!

Here is the portion of the legislations referring to QUARRIES:

Senator Darling

Representative Nygren

TRANSPORTATION

Omnibus Motion -- Change to Base

Motion:

Move to include the following transportation provisions in AB 56 / SB 59:

Transportation Finance

- 36. Local Regulation of Nonmetallic Mining at Quarry Operations. Move to incorporate the provisions of LRB 3029/P4 which would limit the authority of political subdivisions to place limits or conditions on the operations of a quarry. A political subdivision would include a county, city, village, or town. The provisions would take effect on the general effective date of the bill, except as specified. Include the following provisions:**
- a. Definitions. Create the following definitions:**
 - 1. "Quarry" would mean the surface area from which nonmetallic minerals, including soil, clay,**

sand, gravel, and construction aggregate, that are used primarily for a public works project or a private construction or transportation project, are extracted and processed.

2. "Quarry operations" would mean the extraction and processing of minerals at a quarry site and all related activities, including blasting, vehicle and equipment access to the quarry site, and loading and hauling of material to and from the quarry site.

3. "Permit" would mean a form of approval granted by a political subdivision for the operation of a quarry.

4. "Nonconforming quarry site" would mean land on which a quarry existed lawfully before the quarry became a nonconforming use, including any contiguous parcel. The nonconforming status of any contiguous parcel shall be subject to the requirement that, on a five year rolling average, 75% of the quarry materials extracted from the contiguous parcel shall be used for infrastructure-related projects, as determined by the quarry operator. If this 75% requirement is not met as to any contiguous parcel, the nonconforming status of the contiguous parcel may be suspended. The definition would not preclude a determination that a particular parcel is nonconforming under: (a) the current law definition of a nonconforming use, which means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but

that does not conform with the use restrictions in the current ordinance; or (b) common law.

5. "Contiguous" would mean sharing a common boundary or being separated only by a waterway, section line, public road, private road, transportation right-of-way, or utility right-of-way.

6. "Contiguous parcel" would mean any parcel of land, up to a cumulative limit of 80 acres, that as of January 1, 2001, is: (a) contiguous to, and is located in the same political subdivision as, land on which a quarry existed lawfully before the quarry became a nonconforming use; (b) is under the common ownership, leasehold, or control of the person who owns, leases, or controls the land on which the quarry is located; and (c) is shown to have been intended for quarry operations prior to the effective date of the ordinance that rendered the use nonconforming. The provision would specify that if the contiguous parcel of land was commonly owned, leased, or controlled on January 1, 2001, there is a presumption that the contiguous parcel of land was intended for quarry operations prior to the effective date of the ordinance that rendered the use nonconforming.

b. Local Regulation of Quarry Operations. Specify that none of the new provisions may be construed to affect the authority of a political subdivision to regulate land use for a purpose other than the quarry operations, including the provisions related to permits, blasting, water quality or quantity, and

air quality. Specify that none of these listed provisions may be construed to exempt a quarry from a regulation of general applicability placed by a political subdivision that applies to other property in the political subdivision that is not a quarry unless the regulation is inconsistent with the included provisions.

Create the following prohibitions and authorizations related to local regulation of quarry operations.

- 1. Except as provided in (2) and (3), authorize a political subdivision to require a quarry operator to obtain a zoning or nonzoning permit to conduct quarry operations.**
- 2. Prohibit a political subdivision from requiring a quarry operator to obtain a zoning or nonzoning permit to conduct quarry operations unless, prior to the establishment of quarry operations, the political subdivision enacts an ordinance that requires the permit.**
- 3. Prohibit a political subdivision from requiring a quarry operator to obtain a nonzoning permit to conduct quarry operations if the quarry operation operates under a previously issued zoning permit.**
- 4. Specify that if a political subdivision enacts a nonzoning ordinance regulating the operation of a quarry that was not in effect when quarry operations began at a quarry, the limit would not apply to that quarry or to land that is contiguous to the land on which the quarry is located, is under**

the common ownership, leasehold, or control of the person who owns, leases, or controls the land on which the quarry is located, and is located in the same political subdivision.

5. Prohibit a political subdivision from adding conditions to a zoning or nonzoning permit during the duration of the permit, unless the permit holder consents.

6. Prohibit a political subdivision from enacting an ordinance that prohibits continued quarry operations at a nonconforming quarry site. Continued quarry operations would include conducting quarry operations in an area of a nonconforming quarry site in which quarry operations have not previously been conducted. This provision would not modify or limit an operator's reclamation obligations under a reclamation permit.

7. Specify that, if a political subdivision requires a quarry operator to comply with another political subdivision's ordinance as a condition for obtaining a zoning or nonzoning permit, the political subdivision that grants the permit may not require the quarry operator to comply with a provision of the other political subdivision's ordinance enacted after the permit is granted while the permit is in effect.

8. Prohibit a town from requiring, as a condition for granting a permit to a quarry operator, that the quarry operator satisfy a condition that a county

requires in order to grant a permit that is imposed by a county ordinance enacted after the county grants a permit to the quarry operator. Prohibit a county from requiring, as a condition for granting a permit to a quarry operator, that the quarry operator satisfy a condition that a town requires in order to grant a permit that is imposed by a town ordinance enacted after the town grants a permit to the quarry operator.

c. **Local Regulation of Blasting at Quarry Operations.** Create the following provisions related to local regulation of blasting at quarries:

1. "Affected area" would mean an area within a certain radius of a blasting site that may be affected by a blasting operation, as determined using a formula established by the Department of Safety and Professional Services (DSPS) by rule that takes into account a scaled-distance factor and the weight of explosives to be used.

(Administrative code Chapter SPS 307.41 (2) includes a scaled distance formula calculation. In general, a scaled-distance formula is used to determine the maximum amount of explosives that can be used that ensures safety to structures within a certain distance of the blasting site.)

2. Prohibit a political subdivision from limiting blasting at a quarry. Notwithstanding the prohibition, authorize a political subdivision to require the operator of a quarry to do any of the

following: (a) provide pre-blast notice of the blasting operation to all political subdivisions in which the quarry is located and owners of dwellings or other structures within the affected area; (b) require that a pre-blast building survey be conducted by a third party on dwellings and other structures within the affected area; (c) require that pre-blasting well surveys and testing be conducted by a third party within the affected area; (d) provide evidence of insurance to each political subdivision in which any part of the quarry is located; (e) provide copies of blasting logs to each political subdivision in which any part of the quarry is located; (f) provide maps of the affected area to each political subdivision in which any part of the quarry is located; and (g) provide copies of any reports submitted to DSPS relating to blasting at the quarry.

3. Authorize a political subdivision to suspend a permit for a violation of the state blasting requirements under s. 101.15 of the statutes, and rules promulgated by DSPS related to blasting under s. 101.15 (2)(e), only if DSPS determines that a violation of the requirements or rules has occurred and only for the duration of the violation, as determined by DSPS. (Under s. 101.15, DSPS administers rules under Chapter SPS 307, which regulate blasting and use of explosives at nonmetallic mining sites.)

4. Prohibit a political subdivision from making or

enforcing a local order that limits blasting at a quarry. As an exception to this prohibition, authorize a political subdivision to petition DSPS for an order granting the political subdivision the authority to impose additional restrictions and requirements related to blasting on the operator of a quarry. If DSPS issues the order, the order may grant the political subdivision the authority to impose restrictions and requirements related to blasting at the quarry that are more restrictive than the state blasting requirements under s. 101.15 of the statutes, and DSPS rules promulgated under s. 101.15. Prohibit DSPS from charging a fee for a petition submitted by a political subdivision under this provision. Specify that, if a political subdivision submits a petition to DSPS because of concerns regarding the potential impact of blasting on a qualified historic building, DSPS would be authorized to require the operator of the quarry to pay the costs of an impact study related to the qualified historic building.

d. Local Regulation of Water Quality and Quantity Related to Quarry Operations.

Prohibit a political subdivision from doing any of the following with respect to the operation of a quarry: (1) establish or enforce a water quality standard; (2) issue permits, including permits for discharges to the waters of the state, or any other form of approval related to water quality or quantity; (3) impose any restriction related to

water quality or quantity; and (4) impose any requirements related to monitoring water quality or quantity.

Authorize a political subdivision to require the operator of a quarry to conduct and provide water quality and quantity baseline testing and ongoing water quality testing, to occur not more frequently than annually, of all wells within 1,000 feet of the perimeter of a quarry site when a new high-capacity well is added to an existing quarry site or a new quarry site is established. A testing requirement under this provision could not impose any standard that is more stringent than the standards for groundwater quality required by rules promulgated by the Department of Natural Resources (DNR). Authorize the political subdivision to request a report of well testing results within 30 days of the completion of testing and require the quarry operator to provide the results within that time. Specify any person offered the opportunity to have a well tested under this requirement, but who knowingly refuses testing, would waive any claim against a quarry operator related to the condition of the well, if within 90 days of the offer, the quarry operator records with the county Register of Deeds a written certification, verifying under oath that the person owning the property knowingly refused testing. Authorize a political subdivision that imposes a requirement to conduct any ongoing water quality

or quantity testing of wells adjacent to existing quarry sites prior to the effective date of the budget act, to continue to do so.

Authorize a political subdivision to enforce properly adopted local water regulations. In addition, authorize a political subdivision to suspend a permit for a quarry operation for a violation of state law or rules promulgated by DNR relating to water quality or quantity, only if DNR determines that a violation of state law or rules has occurred and only for the duration of the violation, as determined by DNR.

e. Local Regulation of Air Quality and Fugitive Dust Related to Quarry Operations.

Notwithstanding the current authorization in s. 285.73 of the statutes for local governments to administer certain air pollution control programs, prohibit a political subdivision from doing any of the following with respect to the operation of a quarry: (1) establish or enforce an ambient air quality standard, standard of performance for a new stationary source, or other emission limitation related to air quality; (2) issue permits or any other form of approval related to air quality; (3) impose any restriction related to air quality; or (4) impose any requirement related to monitoring air quality.

As exceptions to this prohibition, authorize a political subdivision to: (1) take actions related to

air quality that are specifically required or authorized by state statute; (2) require the operator of a quarry to use best management practices to limit off-site fugitive dust; (3) enforce properly adopted fugitive dust regulations; or (4) suspend a permit for operation of a quarry for a violation of state law or rules promulgated by DNR relating to air quality, only if DNR determines that a violation of state statute or rules has occurred and only for the duration of the violation, as determined by DNR.

The above segment is very similar if not the same as was printed as part of the 2017 transportation budget bill. At that time it included the same requests and the intent was to reduce the power of the towns, counties, cities, villages and other municipalities including zoning powers.

If you would like to read the total transportation bill as introduced last week, please click on this link:

<https://www.wispolitics.com/wp-content/uploads/2019/06/190606DOT.pdf>

Take ACTION by calling the Joint Finance

Committee members who developed the Transportation Budget and the above add-on plus call or write to your local legislators.

Elizabeth Ward of the Wisconsin Chapter of the Sierra Club may be getting out more information soon. I will provide you with that information when and if it arrives. Anyway one looks at the legislation, none of it serves the efforts of protecting the environment or the people who live on this earth.

I took this quote from an activist I visited with today. It is appropriate:

“The Earth does not belong to man; Man belongs to the Earth ... All things are connected. ... Man did not weave the web of life, he is merely a strand in it. Whatever he does to the web, he does to himself.”... Chief Seattle (1786 – 1866)

Patricia Popple 715-723-6398 sunnyday5@charter.net

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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CHECK OUT THE WEBSITE: CCC-WIS.COM and for additional information, [click here](#) for panoramic aerial views of frac sand mines, processing plants, and trans-load facilities. FracTracker.org is also an excellent source of information