

INSTRUCTIONS FOR FORM FOR RECORDING A MARKETABLE NONMETALLIC MINERAL DEPOSIT WITH THE OFFICE OF REGISTER OF DEEDS

A. Introduction

These instructions are for the accompanying form, which was developed to assist landowners who wish to register a marketable nonmetallic mineral deposit on land they own. Such registration is allowable under subch. VI of ch. NR 135, Wis. Adm. Code. These administrative rules have been promulgated by the Wisconsin Department of Natural Resources as directed by s. 295.20(4), Stats.

The form was developed by the Department as an aid to assist landowners wishing to register marketable nonmetallic mineral deposits. Use of this form is not mandatory – any registration is valid as long as it meets the requirements detailed in NR 135 and the law that governs recording of deed documents. The form was developed to give guidance for proper format and meet the legal requirements for registration in most situations. However, a particular landowner should review the relevant facts, and may wish to include additional or different information in registration – such an approach is appropriate, so long as the recording meets the requirements of s. NR 135.56, Wis. Adm. Code and other applicable law.

When completed, the accompanying form should be recorded with the Office of the Register of Deeds in the county where the property containing the marketable nonmetallic mineral deposit is located. There is a fee for recording this document.

This document and the accompanying registration form are intended solely as guidance and do not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

B. General Instructions and Format

Filings with an Office of the Register of Deeds need to meet the format requirements in s. 59.43(2m), Stats. Among other things, these require that filings be on white paper, have a 0.5 inch blank top margin, be reproducible by a copy machine and microfilm camera or optical scanner, be in black ink and not be hinged or completely joined on any side or top margin. These days, documents filed with Registers of Deeds are usually optically scanned, so the margins, black ink color and legibility requirements are particularly important.

Note, for many fields, the space shown may not be sufficient, or the landowner may wish to add additional information. In such cases, additional sheets may be attached providing they meet the format requirements in s. 59.43(2m)(b), Stats., some of which are discussed above.

C. Explanation and Instructions for Specific Fields

Section 1. Fill in name and address of landowner(s). Under s. NR 135.55, Wis. Adm. Code, only a landowner may register a marketable nonmetallic mineral deposit. The landowner's signature is provided elsewhere in Section 7., as discussed below.

Section 2. The **current** legal description of land containing the marketable nonmetallic mineral deposit needs to conform to the requirements of s. 706.05(2m), Stats. so that it can be added by the Registrar of Deeds to the county's tract index of real estate. Use of an outdated or superseded legal description can cause confusion and legal uncertainty.

Section 3. The details that must be provided for certification and delineation of a marketable nonmetallic mineral deposit are set out in s. NR 135.56(1), Wis. Adm. Code. Any "marketable nonmetallic mineral deposit" that a landowner wishes to register must meet the definition in s. NR 135.54, Wis. Adm. Code, namely:

"A marketable nonmetallic mineral deposit is one which can be or is reasonably anticipated to be commercially feasible to mine and has significant economic or strategic value. The significant economic or strategic value must be demonstrable using geologic, mineralogical or other scientific data, due to the deposit's quality, scarcity, location or proximity to a known user."

Section NR 135.56(1), Wis. Adm. Code requires the following information be provided by a Wisconsin registered professional geologist or registered professional engineer to show that a marketable nonmetallic mineral deposit exists. This code requires the showing to be based on the following factors:

- a. Type and quality of the deposit (homogeneity, interbedded units, sorting, strength, etc.)*
- b. Areal extent and depth of the deposit.*
- c. How deposit's quality, extent, location and accessibility contribute to it's marketability.*
- d. How the deposit is marketable, that is:*
 - i. Commercially feasible to mine, and*
 - ii. Has significant economic or strategic value, based on deposit's quality, scarcity, location, quantity or proximity to a known user.*
 - iii. Geologic, mineralogic or other scientific data showing the significant economic or strategic value as defined in item ii. above.*

e. The quality of the deposit in relation to current and anticipated standards and specifications for this type of material.

The showing in a. through e. above must be part of the certification filed with the appropriate Office of the Register of Deeds. Section NR 135.56(1), Wis. Adm. Code requires these parts of the certification must be supported by logs or records of drilling, boring, geophysical surveys, records of physical inspections of outcrops, or equivalent scientific data, but there is no code requirement that this supporting information be included in the registration filing. Therefore, supporting information, which is likely to be extensive and often of difficult-to-record format [e.g. maps, reports, survey data] should be available to the geologist or engineer making the certification, but need not be part of the recorded registration filed with the Office of Register of Deeds.

Section 4. The statement for certification by a registered geologist or engineer is required by s. NR 135.56(2), Wis. Adm. Code, which also requires an affixed geologist or engineer's seal. The statement and sealing for this certification can be done on an attachment to the registration form, such as a report, letter or other document, so long as the requirements in s. 59.43(2m)(b), Stats., [discussed above] are met.

Section 5. Section NR 135.56(3)(a), Wis. Adm. Code requires that a person wishing to register land must show evidence that nonmetallic mining is a permitted or conditional use for the land under zoning in effect the when notice of intent to register was provided as described in Section 6. below. Such evidence could be an attached copy of the zoning ordinance, or a signed statement from a zoning administrator or equivalent official explaining how nonmetallic mining is a permitted or conditional use. Section NR 135.56(3)(b), Wis. Adm. Code further provides that nonmetallic mining is a "permitted or conditional use" if either there is no zoning, or the zoning category in effect states either mining is a permitted use or may be allowed as a conditional use. [Note: *If an application is required for a conditional use permit, it is **not** required to apply for or obtain that permit in order to register a marketable nonmetallic mineral deposit.*]

Section 6. Under s. NR 135.56(4), Wis. Adm. Code, a copy of the proposed registration and supporting information must be at least 120 days prior to filing to: the zoning authority (as defined in s. NR 135.53(3), Wis. Adm. Code); the county and, if one exists, municipal nonmetallic mining reclamation regulatory authority (as defined in s. NR 135.03(20), Wis. Adm. Code); the city, village or town in which the deposit is located; and the Wisconsin Department of Natural Resources. Please send notification to the Department through its Bureau of Waste Management, P.O. Box 7129, Madison, WI 53707-7921.

Section 7. The statement and signature in Section 7 is included to make it clear that that the material submitted for registration of a marketable nonmetallic mineral deposit is accurate and meets the legal requirements for registration. Under s. NR 135.55, Wis. Adm. Code, the **landowner** is the only person authorized to register such deposits. Therefore, the landowner is responsible for the accuracy and sufficiency of such information. It will not be checked or verified by the Office of the Register of Deeds who accepts the registration, nor any other person

or organization. For multiple owners, all should sign. If more than two persons own the land, additional signatures of all landowners should be attached.

The signature(s) in Section 7. also are included to meet the requirement in s. NR 135.56(5) that the landowner certify that that he/she/they and their successors will not undertake action to permanently interfere with present or future extraction of the nonmetallic mineral deposit while registered.

Finally, Section 7. also clarifies the provision of s. NR 135.56(6), Wis. Adm. Code that a filing of registration with the Office of the Register of Deeds include “the date of recording, and the date registration expires”. The code requires registration begin on the “date of recording” which will reflect date and time the document is received for recording. The Office of the Register of Deeds will stamp the actual date of recording at the appropriate spot in the first page of the recorded document. The date of recording may be some time later than the date of preparation or signature in this section, particularly if submittal is by mail.

Statement of Authentication or Acknowledgment and Preparer Identification:

Section 706.05(2)(b), Stats. requires each “instrument offered for record” contain a form of authentication authorized by s. 706.06, Stats. Section 706.06, Stats. allows “authentication” of signatures by a public officer or member of the Wisconsin bar, or alternatively “acknowledgment” of signatures as declared accurate by a notary public or other officer pursuant to s. 706.07, Stats. This is provided for in the block at the lower right of the bottom of the second page of the registration form. Either action to verify the signatures will work and this part of the form is drafted to allow either but not require both. If authentication per s. 706.06, Stats., is by an attorney, they should fill in their State Bar number.

The box at the lower left of the bottom of the second page is a space to identify the preparer of the form. This information is required under s. 59.43(5), Stats.