

AGGREGATE PRODUCERS of WISCONSIN



QUARTERLY NEWS

September 2019

Producers of Crushed Stone, Sand and Gravel

Message from the President

Thank you to all the Members and Associate Members who have supported our legislative efforts over the past two budget cycles. As you may know, our quarry reform legislation again fell victim to the governor's veto pen. Our lobbying and legal team, along with our small group of board members, worked very hard over the last four plus years to work out a reasonable solution to some of the redundant and overreaching local regulations that have continued to threaten many of our pit and quarry operations.

Your efforts through the PAC donations, quarry tours and hosting legislators has made an impact for our industry across the state. Through this effort and your generous support of our cause, the Aggregate Producers of Wisconsin is now a more recognized association, not only Madison, but across the state of Wisconsin.

As our lobbyists meet with the governor's office and key legislators to discuss next steps in our quarry reform strategy, we take pause to reflect on the accomplishments of the last four years.

In the last year, we have hosted quarry tours in the following areas of the state; Richfield, Kiel, Waterloo, Appleton, Racine, Oshkosh, New Richmond, Mondovi, Burlington, and DeForest. We have hosted over 24 legislators, city and county officials. These tours have been invaluable to our quarry reform efforts and all of the legislators who have attended have been very impressed with the condition of our sites and the efficiency in which we operate under the scrutiny of MSHA and other agencies.

Please consider hosting a quarry tour or a tour of your facility if you are an associate member. Remember the more we educate and communicate about value and importance that our industry brings to the people of Wisconsin, the better off we will all be in the future.

As challenging as this has been for all of us, we will continue to formulate a plan for next steps. Once we have new path, we will certainly let all of you know. Thank you again for all of your support and I am hopeful that we will get some changes made that will protect our industry from the unnecessary burdens that are being placed upon it.

Sincerely,

Renee Burcalow,
APW President

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Executive Director's Message

With summer at an end and winter within sight, I'm sure all of you are busy in your pits and quarries trying to make the most of the beautiful weather we've been having. While all of you are surely hard at work, I want to share all of the ways APW has been hard at work on your behalf as well.

First and foremost, APW continues to monitor legislation and regulations that affect our industry. Included in this newsletter is a full legislative and regulatory report. Please review this closely to ensure you are up to date on everything happening here in Wisconsin.

While APW was not successful in passing our quarry reform language in the state budget, our efforts will not be deterred. Our lobby team worked hard to get this done in the budget and will continue to work hard as we explore other opportunities for us to get this passed. APW issued a statement after the governor announced his veto. The statement reads as follows:

Statement on the Veto of Local Regulation of Quarries by Governor Evers

"We are sincerely disappointed with the governor's decision to not include quarry reforms in the state budget. These changes would have provided much-needed transportation efficiencies and savings to Wisconsin taxpayers in every corner of the state.

"Increased transportation costs of material equal increased taxpayer dollars spent on road projects. These reforms would have reduced trucking costs, which would have reduced the costs of road construction projects. Unfortunately, that will not happen with the budget signed by Governor Evers.

"We thank the Republican and Democratic legislators who worked with us to move these reforms forward, and we look forward to continued work with those who wish to save taxpayer money."

Finally, please take the time to review the registration form in this newsletter for APW's annual convention on Thursday, December 5, at the Holiday Inn in Stevens Point. This year, the convention will have an update from our lobbying team, the DNR, and breakout sessions which will provide attendees with the latest advancements and efficiencies in the aggregate industry.

General exhibitor and sponsorship registration is now open and included in this newsletter. Please take a moment to review and register to ensure you are set for the convention in December. A full agenda will be sent out in the mail as soon as it's available.

APW continues to work diligently on behalf of our membership. Please participate in our upcoming events and take stock in all the association has to offer. APW wishes you the best in your work for the remainder of the year and see you at the convention!

Erin Longmire
APW Executive Director



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DNR Looks to Revise NR 538; Beneficial Use of Industrial Byproducts

The Wisconsin Department of Natural Resources (DNR) is looking to revise rules relating to the use of industrial byproducts. APW is monitoring this revision closely, as some of the proposed revisions may affect the non-metallic mining reclamation process. Below details a portion of the draft proposal that may affect our operations. APW will keep you updated on this process.

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NR 538.08 **Determination of eligible uses.** Acceptable beneficial uses for industrial byproducts that have been determined not to be a hazardous waste as defined in s. NR 660.10 (52) and tested in accordance with s. NR 538.06 shall be determined as follows:

(1) **CONTAINED OR CONVERTED USES.** All industrial byproducts are eligible for contained or converted uses in accordance with provisions of s. NR 538.10 (1).

(2) **GEOTECHNICAL FILL.** Industrial byproducts that have been determined to contain less than the concentration specified for the parameters listed in ch. NR 538 Appendix, Table 1, Column B, are eligible for use as geotechnical fill in accordance with the provisions of ss. NR 538.10 (2) and 538.12, except nonmetallic mine reclamation uses under s. NR 538.12 (2) (e), which must be determined to contain less than the concentration specified for the parameters listed in ch. NR 538 Appendix, Table 1, Column A.

(3) **CONSTRUCTION USES.** Industrial byproducts that have been determined to contain less than the concentration specified for the parameters listed in ch. NR 538 Appendix, Table 1, Column B, are eligible for construction uses in accordance with the provisions of s. NR 538.10 (3).

(4) **UNCONFINED USES.** Industrial byproducts that have been determined to contain less than the concentration specified for the parameters listed in ch. NR 538 Appendix, Table 1, Column B and Table 2 are eligible for unconfined uses in accordance with the provisions of s. NR 538.10 (4).

(5) **SOIL OR PLANT ADDITIVES.** Flue gas desulfurization materials that have been determined to contain less than the concentration specified for the parameters listed in ch. NR 538 Appendix, Table 3, are eligible for use as soil and plant additives in accordance with the provisions of s. NR 538.10 (5). Industrial byproducts intended for use as agricultural liming additives that have been determined to contain less than the concentrations specified in Table 3 of s. NR 204.07 (5) (c) are eligible for use as soil or plant additives in accordance with the provisions of s. NR 538.10 (5).

(6) **CRITERIA AND PROCESS FOR USING ELIGIBILITY STANDARDS.** (a) If a standard for a parameter listed in ch. NR 538 Appendix is above the limit of detection and the limit of quantitation, the standard shall be considered exceeded if the parameter is reported at or above the standard.

(b) If a standard for a parameter listed in ch. NR 538 Appendix is between the limit of detection and the limit of quantitation, inclusive, the standard shall be considered exceeded if the parameter is reported at or above the limit of quantitation.

(c) The following applies when a standard for a parameter listed in ch. NR 538 Appendix is below the lowest achievable limit of detection:

1. If a parameter is not detected in a sample, the standard shall be considered to have been met.

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2. If a parameter is reported at or above the limit of detection but below the limit of quantitation, a confirmation analysis shall be conducted. The standard shall be considered exceeded if the presence of that parameter has been confirmed by the use of an appropriate analytical method.

3. If a parameter is reported at or above the limit of quantitation, the standard shall be considered exceeded.

NR 538.09 Case specific approvals. The department may review the characterization results for an industrial byproduct not defined in s. NR 538.03 (8) in response to a request from the generator and may, on a case-specific basis, approve a beneficial use or uses for that material or conditionally approve a beneficial use that does not meet the beneficial uses or standards specified in this chapter. The department may require additional information prior to a case-specific approval. Any exemption or approval granted under this section shall be in accordance with the applicable requirements of s. 289.43 (4), (7) and (8), Stats.

NR 538.10 Eligible beneficial uses. All uses of industrial byproducts shall meet all applicable structural and physical specifications and generally accepted engineering practices for the use. Under this chapter, the eligible beneficial uses of industrial byproducts that may be exempt from licensing under s. 289.31, Stats., and the regulatory requirements under chs. NR 500 to 528 include any of the following:

(1) **CONTAINED OR CONVERTED USES.** Uses that are fully contained within a licensed, engineered disposal facility, are encapsulated within a matrix material, are burned for fuel, or are converted into a product, including any of the following:

(a) **Encapsulated uses.** Products that may meet these criteria include cement, lightweight aggregate, structural or ornamental concrete or ceramic materials, portland cement concrete pavement, asphaltic concrete pavement, slurry seals, roofing materials, plastics, paint, fiberglass, mineral wool, wallboard, plaster and other products approved in writing by the department.

(b) **Agents for physical or chemical stabilization, solidification or other treatment of solid waste that is to be disposed of at a lined landfill having a leachate collection system or utilized in some other final use approved in writing by the department.**

(c) **Supplemental material used for fuel or to assist air pollution control during the process of combustion for energy production.**

(d) **Daily cover or internal structures at licensed, approved landfills having a liner and leachate collection system. The industrial byproducts used for this purpose may not contain free liquids. The industrial byproducts used at landfills approved to accept alternate daily cover in accordance with s. NR 506.055 may contain no more than 15% silt and clay sized materials as determined by their P200 content and may not be placed in layers greater than 6 inches thick. In addition, any industrial byproducts used as alternate daily cover shall be able to control disease vectors, fires, odors, blowing litter and scavenging without presenting a threat to human health or the environment. Any uses**

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under this paragraph shall be subject to the conditions of the plan of operation and any other applicable solid waste approvals associated with the landfill.

(2) **GEOTECHNICAL FILL.** Geotechnical fill material meeting the project criteria and uses specified in this subsection and s. NR 538.12 where applicable. If more than 5,000 cubic yards are to be used in an individual project, prior written notification in accordance with s. NR 538.14 (5) and concurrence by the department under s. NR 538.14 (6) are required unless the specific concurrence requirements in par. (b) or (f) apply. Industrial byproducts shall be used in accordance with best management practices. The criteria and uses under this subsection are as follows:

(a) *Subgrade fill for the construction of commercial, industrial or non-residential institutional buildings.* Industrial byproducts used as subgrade fill for the construction of commercial, industrial, or non-residential institutional buildings shall have placement of the concrete floor or frostwalls completed as soon as practical after placement of the fill material in accordance with s. NR 538.12 (4). Any area where industrial byproducts are not directly beneath the building shall be sloped to prevent ponding of water, covered with 2 feet of native soil including a minimum of 4 inches of topsoil, and seeded or otherwise covered as approved by the department in writing. Cover shall be placed over fill material as soon as practical after byproduct placement. Final vegetated slopes may not be steeper than a 3:1 horizontal to vertical incline. The use of industrial byproducts as subgrade fill in the construction of residential buildings is prohibited.

(b) *Subgrade fill for the construction of portland cement concrete or asphaltic concrete paved infrastructure.* Industrial byproducts used for subgrade fill for the construction of portland cement or asphaltic concrete paved infrastructure including parking lots, access roads, and private roadways shall have placement of the pavement completed as soon as practical after placement of the fill material. Any area where industrial byproducts are not directly beneath the pavement structure shall be sloped to prevent ponding of water, covered with 2 feet of native soil including a minimum of 4 inches of topsoil, and seeded as soon after byproduct placement as is practical. Prior written notification in accordance with s. NR 538.14 (5) and written concurrence by the department under s. NR 538.14 (6) are required for fills that do not meet the criteria in this subsection. The use of industrial byproducts as paved lot fill is prohibited in residential areas.

(c) *Geotechnical fill material with a soil or gravel cover.* Industrial byproducts beneficially used as geotechnical fill with a soil or gravel cover for sight, sound, safety and structural berms, public recreation trails, construction of sporting venues, limited use parking areas, access lanes, utility trenches not covered by a paved surface in accordance with sub. (3) (c), or other beneficial uses demonstrated to be acceptable by the department shall be sloped to prevent ponding of water, covered with 2 feet of native soils, including a minimum of 4 inches of topsoil or other cover approved by the department in writing, and seeded as soon as practical after placement of the industrial byproducts. Final vegetated slopes may not be steeper than a 3:1 horizontal to vertical incline. Gravel or other granular material may be substituted for topsoil if necessary

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provided the total fill cover is at least 2 feet. The beneficial use of industrial byproducts as geotechnical fill with a soil or gravel cover is prohibited in residential areas.

(d) *Use of foundry sand at livestock operations.* Foundry sand may be beneficially used at livestock operations for any of the following:

1. Liner material in an impoundment or structure used for the storage of livestock manure, livestock feed, or process wastewater. The impoundment or structure shall be designed and constructed in accordance with applicable natural resources conservation service standards and local ordinances, and in accordance with plans and specifications approved under chs. NR 213 and 243, if applicable.
2. Geotechnical fill beneath an area where livestock will be housed or confined. Any areas of foundry sand fill that will be washed or mechanically scraped shall be paved with an asphalt or concrete surface, or a 2 feet thick protective soil layer, over the industrial byproduct. The livestock housing or confinement area design and construction shall be in accordance with applicable natural resources conservation service standards and local ordinances, and in accordance with plans and specifications approved under ch. NR 243, if applicable to any portion of the project.

Note: Natural resources conservation service (NRCS) conservation practice standard Code 313 applies to waste storage facilities, and NRCS conservation practice standard Code 629 applies to feed storage facilities. Copies of these and other conservation practice codes can be obtained online from the NRCS Field Office Technical Guide, www.nrcs.usda.gov/wps/portal/nrcs/site/wi/home. Copies are also available at the Wisconsin NRCS state office or the Wisconsin Land and Water Conservation Association office.

(e) *Transportation facility embankments.* Industrial byproducts used as geotechnical fill for transportation facility embankments such as linear roadway sound and sight barrier berm embankments, airport embankments, and roadway bridge or overpass embankments constructed under the authority of Wisconsin department of transportation or a municipality shall meet the criteria in this paragraph. Any area where industrial byproduct is used as an embankment and not covered by pavement or road shoulder material, shall be sloped to prevent ponding of water, covered with 2 feet of native soils including a minimum of 4 inches of topsoil, or other cover approved by the department in writing, and seeded with an approved Wisconsin department of transportation seed mix as soon as practical after placement of the industrial byproducts. Final vegetated slopes may not be steeper than a 3:1 horizontal to vertical incline.

(f) *Geotechnical fill material used in the reclamation of nonmetallic mining sites to restore them to a stable and safe condition.* Industrial byproducts that do not exceed the concentrations specified in ch. NR 538 Appendix, Table 1, Column A may be beneficially used as geotechnical fill material in the reclamation of nonmetallic mining sites to restore them to a stable and safe condition. Prior written notification in accordance with s. NR 538.14 (5) and concurrence by the department under s. NR 538.14

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(6) are required for all nonmetallic mine reclamation projects. Reclamation of a nonmetallic mine within an area of Silurian bedrock as defined under s. NR 151.015 (17) shall be approved as a case-specific approval in accordance with s. NR 538.09. Additional requirements for the use of industrial byproducts for reclamation of nonmetallic mining sites include the following:

1. The use of industrial byproducts at a nonmetallic mining site with a reclamation permit issued under ch. NR 135 shall be in accordance with the approved reclamation plan required under s. NR 135.19. If the reclamation plan does not specify the use of industrial byproducts as fill material, the plan shall be modified in accordance with s. NR 135.24 to reflect the use of these byproducts. The reclamation plan or modification shall be approved by the regulatory authority before applying for concurrence by the department.

2. The owner or operator of a nonmetallic mining site not subject to ch. NR 135 requirements that is proposing the use of industrial byproducts as part of mine reclamation shall submit a reclamation plan to the department. The reclamation plan shall be prepared in accordance with ss. NR 135.19 (1) to (4) for the portion of the mine site that will accept fill material. A mine reclamation project at a mine site that does not have an approved reclamation plan issued under ch. NR 135 shall be subject to a case-specific approval in accordance with s. NR 538.09.

3. The volumes of industrial byproduct to be used as geotechnical fill in a nonmetallic mine reclamation shall be in quantities no more than is necessary to restore the site to a stable and safe condition. This includes constructing safety berms, buttressing unstable side slopes to provide for a revegetated surface, placement of no more than 2 feet of manufactured soils under sub. (4) (c) or other appropriate byproducts to establish a rooting zone layer, or the use of byproducts or byproduct blends as a topsoil substitute material as defined under s. NR 135.03 (24).

4. Any area where industrial byproducts are beneficially used as geotechnical fill in the reclamation of a nonmetallic mine site shall be sloped to prevent ponding of water, covered with 2 feet of native soils including a minimum of 4 inches of topsoil or other cover approved by the department in writing, and seeded in accordance with the reclamation plan as soon as practical after placement of the industrial byproducts. Final vegetated slopes may not be steeper than a 3:1 horizontal to vertical incline.

5. For all nonmetallic mine sites, geotechnical fill shall not be placed within 5 feet of the groundwater table at the time the byproduct material is placed.

6. The beneficial use of industrial byproducts as geotechnical fill in the reclamation of nonmetallic mines is prohibited in residential areas or areas where residential construction is planned as a post-reclamation land use.

Note: Federal rules restrict the use of coal combustion residuals as fill in sand and gravel pits and quarries under ss. 40 CFR 257.50-107, subpart D.

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Note: Best management practices under this paragraph may include ASTM D-7765 when foundry sand is used for structural fill or embankments, ASTM E-2277 for the use of coal ash in structural fills, Wisconsin department of transportation specifications for highway and structure construction, or other established engineering construction standards and practices appropriate for the project.

(3) CONSTRUCTION USES. Construction uses in accordance with the project criteria and uses specified in this subsection. Industrial byproducts used in this subsection may not be placed within areas of permanent standing water or areas that need to be dewatered prior to placement due to groundwater infiltration. Construction uses include any of the following:

(a) *Subgrade fill for the construction of a paved federal, state, or municipal roadway.* Industrial byproducts placed as part of construction of a paved federal, state or municipal roadway may not extend beyond the subgrade shoulder point and the depth of the fill may not exceed 4 feet, except for incidental sections of the fill. Any area where industrial byproducts are not directly beneath the pavement structure shall be sloped to prevent ponding of water, covered with base course or native soil, including topsoil, and seeded as soon as practical after placement of the industrial byproduct. Placement of the pavement structure shall be completed as soon as practical after placement of the fill material. For fills greater than 4 feet in depth, the design shall adhere to the criteria specified in sub. (2) (e). The use of industrial byproducts as paved roadway subgrade fill is prohibited in residential areas, unless used in a roadway designed with a rural type cross-section without curbs and gutters.

(b) *Base aggregates for the construction of commercial, industrial and non-residential institutional building slabs and paved infrastructure.* Industrial byproducts used as base aggregates for the construction of commercial, industrial, and non-residential institutional building slabs and paved infrastructure including parking lots, access roads, and federal, state and municipal roadways shall meet the project specified physical properties of the Wisconsin department of transportation Section 301 standard specifications for base aggregates. The use of industrial byproducts as base aggregates under this subsection is prohibited in residential areas, unless used in a roadway designed with a rural type cross-section without curbs and gutters.

(c) *Utility trench backfill.* Industrial byproducts used to backfill a utility trench constructed for the placement of a sanitary or storm sewer, a non-potable water line, a gas main, or telecommunications, electrical or other utility lines shall be covered by a paved roadway, parking lot or other portland cement concrete or asphaltic concrete paved structure and shall not extend more than 4 feet beyond the pavement structure. Any area where industrial byproducts are not directly beneath the pavement structure shall be sloped to prevent ponding of water, topsoiled, and seeded as soon as practical after placement of the industrial byproduct.

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(d) *Abandonment of tanks, vaults, or tunnels.* Industrial byproducts may be beneficially used for the abandonment of tanks, vaults or tunnels that will completely contain the industrial byproduct. This use does not include the placement of an industrial byproduct in a location where environmental pollution has been identified unless it is specified in a plan approval by the department.

(e) *Slabjacking material.* Industrial byproducts used as a component in a slabjacking material in combination with portland cement, lime, or bentonite shall be placed beneath portland cement concrete paved structures to raise areas that have settled. The slabjacking material shall be placed directly from an enclosed transport vehicle. Projects using more than 2 cubic yards of industrial byproduct as a slabjacking material are prohibited in residential areas.

(f) *Soil and pavement stabilization.* Coal combustion fly ash used as soil and pavement base stabilization for structural improvements shall be used in accordance with ASTM C618 or the Wisconsin department of transportation specifications for highway and structure construction, or other good engineering practices acceptable to the department. The use of industrial byproducts as soil and pavement base stabilization is allowed in residential areas for those beneficial uses specified in par. (a) if approved by the local unit of government with jurisdiction over the roadway.

Note: ASTM C618 is the American society for testing and materials "Specification for Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use in Concrete." Copies of this test procedure can be obtained from ASTM International at <https://www.astm.org/Standards/C618.htm>. Copies of the standard are also available for inspection at the offices of the department of natural resources and the legislative reference bureau.

(g) *Controlled low strength material.* Industrial byproducts incorporated into controlled low strength material for structural improvements, commonly referred to as flowable fill, shall be used in accordance with ACI 229R, the Wisconsin department of transportation specifications for highway and structure construction, or other good engineering practices acceptable to the department.

Note: ACI 229R is the American Concrete Institute report "Controlled Low Strength Materials." Copies of this report can be obtained at <https://www.concrete.org>. Copies of this report are also available for inspection at the offices of the department of natural resources and the legislative reference bureau.

(h) *Bonded surface course material.* Industrial byproducts used as a bonded surface course such as seal coats and chip seals in paved federal, state or municipal roadways, commercial and private roadway or parking surfaces, driveways, airport runways, and trails shall conform to the Wisconsin department of transportation standard specifications for highway and structure construction applicable to asphaltic pavements, including limitations on the percentage of material passing the P200 sieve and application rates. Within 48 hours of application of the industrial byproduct, the surface shall be rolled to

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thoroughly embed these materials into the asphaltic mastic and, within one week of application, the surface shall be swept to remove any loose excess material.

(4) UNCONFINED USES. Unconfined uses that are not contained, encapsulated, or covered by either 2 feet of soil or an impervious surface and meet the project criteria and uses specified in this subsection. Unconfined uses include any of the following:

(a) *Unbonded surface course material.* Industrial byproducts used as an unbonded surface course shall conform to the requirements of Wisconsin department of transportation standard specifications for highway and structure construction applicable to base materials and may be placed at a cumulative thickness of 6 inches or less and in areas separated by at least a 25-foot vegetated buffer to a navigable surface water. This includes the use of industrial byproducts as a surface course material in unpaved driveways, road shoulders, farm lanes, parking areas, and recreation or exercise trails. The use of industrial byproducts as unbonded surface course is prohibited in residential areas.

(b) *Winter weather road abrasive on roadways with a rural cross-section.* Winter road abrasives using industrial byproducts, wholly or as part of a mixture of abrasives and de-icing compounds, shall meet Wisconsin department of transportation gradation and application rate recommendations for winter highway maintenance contained in the state highway maintenance manual. The use of industrial byproducts as winter road abrasives is restricted to use on roadways designed with a rural type cross-section with only incidental sections of curbs and gutters.

(c) *Manufactured soil blends.* Manufactured soil blends with the mineral component derived from spent silica-based foundry sand from iron, steel, and aluminum foundries shall be comprised of no more than 50 percent spent foundry sand by weight and intended for use as a commercial or consumer product. Soil blends that incorporate industrial byproducts other than foundry sand or solid waste material shall be approved under the case-specific provisions specified in s. NR 538.09.

Note: Bulk land application of spent foundry sand on agricultural fields is regulated under ch. NR 518.

(5) SOIL OR PLANT ADDITIVES DERIVED FROM FLUE GAS DESULFURIZATION OR LIME-BEARING INDUSTRIAL BYPRODUCTS. Flue gas desulfurization or lime-bearing industrial byproducts used as soil or plant additives shall be managed, applied and licensed in accordance with subchapter II of ch. ATCP 40 or ch. ATCP 41. Prior to use, initial certification, and concurrence by the department in accordance with s. NR 538.06 is required. In addition to the certification information, the applicant shall demonstrate, as part of the required written notification, all of the following:

(a) The industrial byproduct, as demonstrated through research projects approved under s. NR 518.04 (2) or previously published research, has value as a soil or plant additive and

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will not result in detrimental effects to the soil or vegetation at the rates and mixtures proposed. If the additive is part of a mixture, the physical and chemical nature of the other materials in the mixture and the relative percentages of each material shall be described in the submittal.

(b) The industrial byproduct or byproduct mixture will not be applied at rates such that excessive accumulation of hazardous substances occurs in soil or vegetation, or cause a detrimental effect on surface water quality, or cause a detrimental effect on groundwater quality that would result in an exceedance of the groundwater quality standards specified in s. NR 140.

(c) The industrial byproduct or byproduct mixture will be applied in accordance with accepted agricultural practices.

(d) Industrial byproducts that are intended for use as agricultural liming materials, as defined under s. 94.66 (1) (am), Stats., meet the requirements of ch. ATCP 41 and do not contain contaminant concentrations exceeding the values listed in Table 3 of s. NR 204.07 (5) (c).

(e) Flue gas desulfurization material intended for use as an agricultural soil amendment does not contain contaminant concentrations exceeding the values listed in ch. NR 538 Appendix, Table 3, and will not be applied in volumes exceeding the maximum recommended application rates as determined by the Wisconsin department of agriculture, trade and consumer protection.

Note: USDA Code 333 is the guidance document “Amending Soil Properties with Gypsum Products,” published as Natural Resources Conservation Service Conservation Practices Standard Code 333 (333-CPS-1), June 2015, and is available through the U. S. department of agriculture website:

[https://efotg.sc.egov.usda.gov/references/public/OH/Amending_Soil_Properties_with_Gypsum_Products_Standard_\(333\).pdf](https://efotg.sc.egov.usda.gov/references/public/OH/Amending_Soil_Properties_with_Gypsum_Products_Standard_(333).pdf).

Note: Copies of Wisconsin department of transportation specifications for highway and structure construction and the state highway maintenance manual are available for inspection at the offices of the department of transportation, department of natural resources and the legislative reference bureau.

Note: Under s. 30.2022, Stats., highway and bridge projects affecting the waters of the state that are carried out under the direction and supervision of the department of transportation are exempt from department permit or approval requirements if accomplished in accordance with interdepartmental liaison procedures established by the department of natural resources and the department of transportation.

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DOT Proposes Revisions to Freeze Thaw Testing

The Wisconsin Department of Transportation's (DOT) Quality Management Program has proposed changes to the freeze thaw test for soundness of aggregates. This new method will be discussed and potentially approved by the full DOT Aggregate Technical Committee meeting later this month. Below details the draft proposal of these changes. APW will update you on the finalized revisions for review. If approved by the technical team, the specifications will be included into ASP6 and effective with December 2019 lettings.

AASHTO T103 WisDOT Modified Method

Follow AASHTO T103 Standard Method of Test for Soundness of Aggregates by Freezing and Thawing, procedure B, with the following modifications:

- 3.1.6 *Temperature-Measuring Equipment*- Shall consist of thermometers, resistance thermometers, or thermocouples, capable of measuring the temperature at various points within the testing chamber and at the centers of each sample container. The thermometers, resistance thermometers, or thermocouples shall have an approximate range from -26 to 50°C (-15 to 120°F), readable and accurate to 1.0 °C. Data storage devices shall be capable of sampling temperature measurements every ~~ten~~five minutes for the duration of the test.
 - 4.2 *Coarse Aggregate*- Coarse aggregate for the test shall consist of +4.75-mm (No.4) sieve size material. For Wisconsin DOT source approval, sample stockpiles with 100 percent passing the 1 ½" sieve. The sample shall be of such a size that it will yield the following minimum:
 - 6 Use procedure B with methyl alcohol.
 - 6.1.2 Each sample fraction container shall be placed in the freeze apparatus. Samples shall be covered and placed a minimum of 6 inches above the base of the apparatus and shall have a minimum of 13 inches clear space around the entire sample (shelf not included). The sample shall be cooled until the temperature at the center of the sample reaches -23 +/- 3 °C (-9 +/- 5°F). A minimum of one temperature probe per freezer shall be placed in the center of a sample while freezing and thawing. A minimum of one fan shall circulate air within the freezer during each freezing cycle. A thermometer or thermocouple shall be suspended in the center of the freezer (in air). The air temperature in the freezer shall not decrease below ~~-28.26~~ °C (~~-18.15~~ °F). Air surrounding the specimen while thawing shall not increase above 30°C (85°F). The temperature at the center of the sample shall be held constant at the low temperature for a minimum of 2 h prior to the start of the thaw cycle. Upon completion of a freeze cycle, the temperature at the center of the sample shall be raised to 21 +/- 3°C (70 +/- 5 °F) and shall be held at the constant thawed temperature for a minimum of 30 min. The air temperature surrounding the specimen during thawing shall not exceed 24 °C (75 °F).
 - 6.2.1 In this procedure, the samples shall be placed in a vacuum chamber and saturated by subjecting them to an air pressure of not over 3.4 kPa (25.4 mm of mercury) and breaking the vacuum with a sufficient amount of 0.5 percent (by mass) solution of methyl alcohol in water to completely cover the samples. The samples shall be left in the solution for 15 min.
 - 7.1 Alternate freezing and thawing shall be repeated until the required number of cycles is obtained. One test cycle consists of one freeze cycle and one thaw cycle. Repeat the procedure of alternate freezing and thawing for 16 cycles. One complete cycle shall not exceed 24 h. If the test is interrupted, the sample shall remain covered in a thawed state until testing is resumed. The sample shall remain partially immersed during the test.
- Delete paragraph 2.

Panel Overseeing State's Largest Road Projects to Reconvene After 5-year Hiatus

September 10, 2019 – Kenosha News

The bipartisan commission charged with evaluating – and ultimately recommending to lawmakers – the state's largest road projects has not met in nearly five years.

However, Gov. Tony Evers and his appointed Secretary of the Wisconsin Department of Transportation Craig Thompson have said that will change this winter when the Transportation Projects Commission reconvenes.

A specific date hasn't been scheduled, but Thompson said the DOT has recommended meeting yet this year.

"I think the communication flow hasn't been as robust as it should be between the Legislature and us on some of these projects," he said. "There needs to be some reliable stability to that and I think that's what we've lacked here in the last decade."

Created in 1983, the TPC takes up discussion on the state's largest projects, including expansions that add more than five lane miles to a roadway or construction of two and a half or more miles of new roadway, such as a bypass.

Projects that exceed an inflation-adjusted price point also fall under the TPC's authority. That number currently sits at about \$92 million.

"That's really why the TPC is so important," said Joe Nestler, the DOT's administrator of the Division of Transportation Investment Management. "They're high-dollar and if you're going to have impacts, these are the projects that are going to have the largest impacts."

The 15-member commission includes five members each from the Senate and Assembly, three citizen members, Thompson, who holds a nonvoting seat, and Evers.

Traditionally, the TPC meets once a year to discuss project study recommendations made in odd-numbered years and project enumeration, or approval to construct, recommendations made in even-numbered years. Recommendations go to the Legislature for approval.

However, the Legislature also has the authority to direct the DOT to study and pursue construction on a major highway project without TPC recommendation.

A spokesperson with the DOT said the only project to be enumerated without the commission's recommendation since 2014 is the six-lane expansion of I-41 between Appleton and De Pere. That project is part of the 2019-21 budget.

In addition, projects already recommended by the TPC have proceeded, but Justin Shell, the DOT's chief of program development and analysis, said no new projects were added to TPC discussion since 2014.

This isn't the first time the TPC has failed to meet. A DOT spokesperson said the commission didn't hold a meeting from 2002-2010. That span covers part of Republican Gov. Scott McCallum's term and the entirety of Democratic Gov. Jim Doyle's time in office.

Reconvening

During a DOT podcast in August, Evers expressed interest in reconvening the TPC.

As governor, he serves as chairman of the TPC and is responsible for calling meetings. Former Gov. Scott Walker's last meeting was held in December 2014.

"Governor Walker believed the state should focus on maintaining existing infrastructure before taking on major new projects," Walker spokesman Jim Dyck said. "He still does."

While Thompson said reconvening the TPC would open the door to more discussion on new and ongoing road projects. He added that doesn't necessarily mean there will be an onslaught of large-scale road projects coming before the Legislature.

"I think the more information we can share with them – status, cost, where studies are at, conditions, all those sorts of things – are important for them to be able to make the right decisions," Thompson said.

Thompson declined to speculate on why Walker chose to stop holding TPC meetings.

"We just want to have a more thoughtful, planned way that we move forward on this in the long term," Thompson said. "It's not productive for me to start throwing stones at previous administrations or second-guessing what they did, but moving forward I think we need to stick to this."

“Not Just ... for Foxconn”

Sen. Dave Hansen, D-Green Bay, who has served on the TPC on five different occasions including this year, said his hope is reconvening will allow for more bipartisan discussion on what projects the state should pursue.

“I think it’s long overdue, I think we should meet again and take a look at all the projects and pick the ones we think are the most beneficial for the whole state, not just I-94 by Racine for Foxconn,” Hansen said.

APW Legislative Update

Legislature/Governor Move Forward With Policy Agendas As Legislative Session Winding Down

With fall right around the corner and the passage of the state budget behind them, Governor Tony Evers and the members of the Republican-controlled legislature are moving forward with their the policy agendas.

The full legislature will meet for the first time since the budget passage in October. Given the partisan make-up of the Executive and Legislative branches we don’t expect too much action from the legislature. However, a few key areas that we expect to see the legislature tackle include: water quality issues, adoption, and suicide prevention.

The legislature is currently scheduled to adjourn near the end of April. However, it’s very likely that they will adjourn much earlier so there isn’t that much time left in this legislative session.



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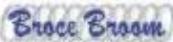




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APW Legislative Update

Congressional Vacancies Could Bring Changes in Legislature

The announcement that two members of the Wisconsin Congressional delegation are leaving could mean some significant changes in the Wisconsin legislature as several high-profile state lawmakers may run to replace them. This may mean new faces, and possibly new leadership, in the GOP-controlled legislature.

Sean Duffy

On Monday, August 26, Republican Congressman Sean Duffy announced that he will resign from Congress effective Monday, September 23, citing a desire to spend more time with his family ahead of the upcoming birth of his ninth child. Duffy has represented Wisconsin's 7th district covering northwest and north-central Wisconsin since being elected in 2010. Because Duffy is resigning before he is up for re-election in November 2020, Governor Tony Evers will have to call a special election to fill his seat. Evers has not yet indicated when he will call the election, but expect it to occur sometime this spring.

Prior to Duffy winning the seat in 2010, the 7th congressional district was held by longtime Democratic Congressman Dave Obey for 42 years. However, since then the district has trended Republican with President Trump winning the district with 58% of the vote in 2016.

Possible candidates looking to replace Duffy include:

State Senators Tom Tiffany (R-Minoqua), Jerry Petrowski (R-Marathon), and Janet Bewley (D-Mason)

Jim Sensenbrenner

On Wednesday, September 3, longtime Republican Congressman Jim Sensenbrenner announced that he will not seek re-election in 2020. Sensenbrenner, first elected in 1978, served 40 years in Congress. The

5th congressional district is strongly in the hands of the GOP, so there will likely be a plethora of Republican candidates to choose from. And given the temptation of a possible lifelong seat in Congress, it will likely be hard for Republicans with ambition to let this opportunity pass them by. Among the possible GOP candidates to replace Sensenbrenner: Waukesha County Executive Paul Farrow, state Senate Majority Leader Scott Fitzgerald, former state Senator. Leah Vukmir (the GOP candidate for U.S. Senate in 2018), state Senators Dale Kooyenga & Chris Kapenga, and former U.S. Senate candidate Kevin Nicholson.

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ESA Revisions Return Law to Its Intended Purpose While Restoring Business Certainty

August 12, 2019

WASHINGTON, D.C. – The National Mining Association (NMA) today welcomed the revisions to the Endangered Species Act (ESA) set forth by the Fish and Wildlife Service and NOAA Fisheries. “These revisions are a step in the right direction to restore the law to its intended purpose: advancing species recovery and ultimately removing species from threatened or endangered status, a goal that deserves undisputed support,” said Hal Quinn, NMA president and CEO. “Unfortunately, for too long, the statute has been misused for reasons that have little to do with any endangered species. They have been a tool to facilitate perpetual listings as the justification for unwarranted land grabs and excessive land-use restrictions.” The impact of the revisions will be to more effectively allow the U.S. Fish and Wildlife Service to respond to past court rulings regarding the findings that federal agencies make with respect to listed species without unnecessarily restricting decision-making needed for projects to move forward. The changes will also restore the law’s original distinction between species that are threatened and those that are facing greater threats and are listed as endangered under the ESA. This important distinction will allow the

Service to dedicate valuable resources to those species most in need while avoiding application of the most severe land use restrictions for species that fall below that threshold. Finally, the revised regulations will better reflect that language of the ESA by mirroring the standards for delisting to those necessary for listing, and by prioritizing the designation of occupied habitat that is critical to species recovery over unoccupied habitat with undemonstrated recovery benefits. Several aspects of the previous regulations impacting the implementation of the ESA were either ambiguous or not consistent with the statute itself, while others directly frustrate the purpose and intent of the ESA — to effectively recover species. The end result was a lack of regulatory certainty that impeded business planning and increased the already burdensome permitting process and costs for industry, ultimately harming the competitiveness of the U.S. mining industry. NMA members are committed to the conservation and recovery of threatened and endangered species and their habitats both during and after operations. In fact, NMA members have reclaimed millions of acres of land, much of which is restored to serve as prime species habitat.

MSHA Seeking Methods to Protect Miners from Quartz Exposure

September 2, 2019

On Aug. 29, 2019, the U.S. Department of Labor’s Mine Safety and Health Administration (MSHA) published a Request for Information (RFI) in the Federal Register seeking data on economically and technologically feasible methods to protect miners from quartz exposure, which accounts for most of the naturally occurring crystalline silica and is present in almost every type of mineral. The RFI includes an examination of an appropriately reduced permissible exposure limit, potential new or developing protective technologies, and/or technical and educational assistance. Mechanized mining and milling operations generate large amounts of dust, which

can expose miners to elevated levels of respirable quartz. Miners exposed to quartz in respirable dust can develop lung diseases, including chronic obstructive pulmonary disease and various forms of pneumoconiosis, such as silicosis, coal workers’ pneumoconiosis, progressive massive fibrosis, and rapidly progressive pneumoconiosis, lung diseases that are irreversible, life limiting, and may lead to death. MSHA’s existing standards limit miners’ exposures to quartz in respirable dust. “The Department of Labor is committed to having the information to make important decisions in order to best protect America’s miners,” says Acting Secretary of Labor Patrick Pizzella. Comments on the RFI will be accepted for 60 days from the date of publication.



Have DOT-Regulated Drivers? Then Get Ready for ELD

On Dec. 16, 2015, the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) published a Final Rule on Electronic Logging Devices and Hours of Service Supporting Documents. The rule requires that motor carriers and drivers retain supporting documents to verify their driving hours. But, the biggest change that the rule instituted is to require that hours of service (HOS) drivers track their hours using an electronic logging device (ELD). Previously, FMCSA mandated that all drivers track their HOS using Records of Duty Status (RODS), which required drivers to record hours on graph grid paper by hand and retain those papers. Times have changed, and the new ELD Rule requires drivers of Commercial Motor Vehicles (CMV) to install ELDs in certain vehicles – model years 2000 and newer. The rule established a timeline to phase in requirements for use of ELDs. By Dec. 16, 2019, the rule enters its third and final phase and will be fully effective.

The first phase, which ended on Dec. 16, 2017, was the “awareness and transition” phase. It only required voluntary use of ELDs while FMCSA conducted presentations, webinars, and other outreach programs to raise awareness and explain the ELD Rule's requirements. During this first phase, FMCSA touted the safety benefits that ELDs promote by correctly tracking hours, but also highlighted that ELDs would eliminate paper and make the process easier for drivers and motor carriers.

The second phase, which began on Dec. 17, 2017, initiated mandatory use of ELDs. During this phase, the rule requires all HOS drivers to track hours using ELDs. The rule provides a temporary reprieve to those currently using grandfathered “Automatic On Board Recording Devices” and allows them until Dec. 16, 2019, to comply with ELD use. The familiar, handwritten grid graph sheets will no longer comply with the HOS standard. Although the rule changes how drivers record hours, the most important thing for drivers and motor carriers to understand is that the rule does not change who must record their hours. The rule did not change any of the existing exceptions to the HOS rule. If the regulations did not require a driver/motor carrier to track hours using RODS, then they are not required to use ELDs.

The HOS rule still only applies to CMV that travel in interstate commerce. Drivers who cross state borders qualify as interstate commerce. However, motor carriers should be aware that FMCSA's definition of interstate is quite broad. FMCSA looks to the initial shipper's intent to determine whether cargo is interstate. Therefore, a driver operates in interstate commerce even without crossing state borders when the original shipper of the hauled cargo intended that the cargo cross state lines.

Even for CMV that travel in interstate commerce, there are a few exceptions to the HOS and new ELD mandate, including short-haul exceptions, as the ELD rule did not change existing exceptions. The most common exception is the short-haul 100 air-mile radius exception, which requires: 1. Drivers to operate within a 100 air-mile radius (115.08 statute miles, or miles composed of 5,280 feet) of their normal work reporting location; 2. Drivers to return to their reporting location and be released within 12 consecutive hours; 3. Passenger-carrying drivers to have 8 consecutive hours off duty between 12 hours on duty; and 4. Drivers to only drive 10 of their 12 hours on duty.

Other air radius exceptions relax the 100 air-mile radius further by allowing vehicles that do not require drivers to hold a CDL to operate in a 150 air-mile radius. The non-CDL, short-haul exception also extends driving windows.

Many other exceptions exist, among them exceptions specifically applying to ready-mix drivers, road construction drivers, and agricultural drivers. Drivers and motor carriers should review all exceptions to determine whether they must comply with the HOS rule. Drivers and motor carriers should also review the requirements in each exception. The short haul exceptions exempt drivers from the HOS requirements to fill out logs, keep supporting documents, and use ELDs, but still require some recordkeeping.

The HOS rules have provisions and exclusions that can confuse anyone. It is important to understand that the ELD rule does not change the HOS rule. It fits into the current rules by changing the manner in which drivers track hours. Affected motor carriers should have already installed ELDs in commercial motor vehicles, trained drivers and employees to use ELDs, begun retaining documents, and ensured that their practices and policies comply with the new rule.

Although compliance of the ELD rule has already phased in for most motor carriers, it is not too late to understand and comply with the ELD Rule. It may be daunting,

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APW 2019 ANNUAL CONVENTION REGISTRATION

2019 Registration Fees

****Deadline for Registration to the Conference is Friday, November 29, 2019.****

Member Fees

Type	Price
◆ General Attendee	\$105

Non-Member Fees

Type	Price
◆ General Attendee	\$155

Company: _____

Phone: _____ Fax: _____

Attendee: _____ E-mail: _____

Attendee: _____ E-mail: _____

Attendee: _____ E-mail: _____

Address: _____

City: _____ State: _____ Zip: _____

Total # of Attendees: _____

TOTAL PAID: _____

Please send your registration form and check made out to APW to:

**APW
PO Box 2157
Madison, WI 53701**

For a special room rate of \$93.00 per night, please contact the The Holiday Inn at: 715-344-0200 and mention that you are with the Aggregate Producers of Wisconsin (APW) to receive that rate. Room block will be released on November 6, 2019, so make your reservations before the release to guarantee that rate.

**The Holiday Inn & Convention Center
1001 Amber Ave.
Stevens Point, WI 54482
(715)344-0200**

Focusing Your Political Resources

Aggregate Producers of Wisconsin Political Action Committee (APW PAC)

► What is the Aggregate Producers of Wisconsin PAC? (APW PAC)

- ◆ A Political Action Committee (PAC) is a group formed (usually by an industry or an issue-oriented organization) to raise and contribute money to the campaigns of candidates likely to advance the group's interests.
- ◆ APW PAC is dedicated to advancing the issues important to the aggregate industry in Wisconsin. The APW PAC will pool money from owners, employees and partners to make contributions to candidates for elected office.
- ◆ Contributions to the PAC must come from individuals; corporate contributions to the PAC are prohibited.

► Protecting Your Industry

- ◆ APW reviews all legislative initiatives affecting your right and ability to conduct your business in Wisconsin.
- ◆ APW supplies you with all the information you need to understand how legislation will affect your business.
- ◆ Contributions are made to state elected officials of any party that supports APW's political initiatives.
- ◆ The APW and APW PAC are not aligned with any political party. We support those who are helpful to our industry.

► Questions & Answers

- ◆ Can I make a personal or business contribution? **A:** The APW PAC can only accept and disperse personal contributions.
- ◆ Why should I contribute to the APW PAC? **A:** Laws that negatively affect aggregate producers can be made at anytime. To protect your future, we need legislators in office who support our industry.
- ◆ Why should my contributions go through the APW PAC? Why not give directly to the candidate? **A:** It is more effective to give through the APW PAC. Through the APW PAC the aggregate industry receives credit for the contribution as well as the individual. A contribution through the APW PAC identifies both you and APW to candidates.

Aggregate Producers of Wisconsin Political Action Committee (APW PAC)

PO Box 2157
Madison, WI 53701
Phone: 608-283-2595
Fax: 608-237-2299

Please make checks payable to Aggregate Producers of Wisconsin Political Action Committee (APW PAC) and mail them to the above address.

Remember, personal checks or credit cards only!

Aggregate Producers of Wisconsin Political Action Committee

NAME _____

COMPANY _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____

HOME ADDRESS _____

____ \$100 – BRONZE MEMBER

____ \$500 – GOLD MEMBER

____ \$250 – SILVER MEMBER

____ \$1000 – PLATINUM MEMBER

____ OTHER

CONTRIBUTION AMOUNT \$ _____

TO ENSURE SECURITY, PLEASE CALL THE APW OFFICE TO PAY BY CREDIT CARD.