

2019-2023 Nonmetallic Mining Fees Report to Natural Resources Board

November 2024

Introduction

Chapter NR 135, Wis. Adm. Code (NR 135) requires the Department of Natural Resources (DNR) Nonmetallic Mining Program (NMM) to prepare for the Natural Resources Board every five years “a report on whether the nonmetallic mining reclamation revenue, expenditures and fees established by the rule and by other regulatory authorities are reasonable” [see s. [NR 135.39\(7\)](#)].

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

In accordance with NR 135 requirements, DNR annually consults with the [Nonmetallic Mining Advisory Committee](#) (NMAC) in regards to audit findings and fees, which serve as the basis for this report.

Nonmetallic Mining & Reclamation Activity: Statewide Trends

This report focuses on reporting years 2019 – 2023. Table 1 summarizes annual RA-reported statewide totals for permitted facilities and open/reclaimed acreage. Noteworthy takeaways include:

- NR135 nonmetallic mine reclamation facilities averaged 2,548 permits statewide.
- The total number of mined acres increased by 9.1% over the previous reporting period.
- An average of 1,294 acres were reclaimed per year (3% of total mined acreage).

Table 1: Statewide Totals for Reporting Years 2019-2023

Year	Percent of RAs Reporting*	# of Permitted Facilities	# Acres Mined	# Acres Reclaimed
2019	94.4	2,570	45,710	673
2020	95.5	2,531	46,735	1,759
2021	94.4	2,569	46,530	840
2022	95.6	2,535	48,515	944
2023	98.9	2,538	50,106	2,256

*91 Total RAs (Source: Nonmetallic Mining Annual Report submittals)

Explanation of Fees

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

Role of Regulatory Authorities

Regulatory Authorities are county or local units of government that have passed ordinances governing the reclamation of nonmetallic mining sites, as specified under NR 135. They are responsible for collecting fees, reviewing operators’ reclamation plans and permitting, and overseeing the reclamation of nonmetallic mining sites within their jurisdiction. The RA transfers a portion of the annual reclamation fees to DNR and provides a Nonmetallic Mining Annual Report on reclamation activity to the DNR’s NMM staff in the Integration Services Section of the Bureau of Environmental Analysis & Sustainability.

DNR Performance Audits

Under s. [NR 135.47](#), Wis. Adm. Code, the DNR is required to audit the nonmetallic mining reclamation program of each RA not less than every 10 years to determine if the program is being conducted in compliance with NR 135, and is effective and consistent in ensuring operator compliance with the statewide uniform reclamation standards. The DNR must provide the RA with a written determination of compliance within 90 days of the audit.

Audits are comprehensive in scope. In addition to a full review of the RA’s reclamation ordinance and the RA program’s administrative compliance with a range of performance categories, each audit includes a review of its fee structure, total annual fees collected, annual administrative expenses, and a determination of whether RA fees are reasonable. A general standard for a reasonable fee structure is one that results in an administratively compliant and financially balanced program that recovers the program’s annual administrative costs without resulting in a total fiscal surplus or deficit of more than \$100 per permitted mining facility. Between 2019 and 2023, DNR conducted 25 RA performance audits as summarized in Table 2.

Table 2: Regulatory Authority Performance Audits 2019-2023

**No RA Performance Audits completed in 2020 due to Covid-19 Pandemic

<u>Audit Year 2019</u>		<u>Audit Year 2021</u>		<u>Audit Year 2022</u>		<u>Audit Year 2023</u>	
Regulatory Authority	Audit Date	Regulatory Authority	Audit Date	Regulatory Authority	Audit Date	Regulatory Authority	Audit Date
Iowa	04/11/2019	Kewaunee	6/1/2021	Dunn	4/20/2022	Sussex	03/01/2023
Pierce	5/16/2019	Rusk	6/22/2021	Chippewa	5/11-12/2022	Clark	4/26/2023
Shawano	6/6/2019	Saint Croix	07/13/2021	Lincoln	7/13/2022	Muskego	5/18/2023
Marquette	07/24/2019	Manitowoc	8/26/2021	Adams	7/19/2022	Polk	06/07-08/2023
Washburn	10/2/2019	Florence	9/23/2021	Dane	08/16-17/2022	Columbia	6/28/2023
				Genesee	7/11/2022	Eau Claire	7/15/2022
				New Berlin	6/7/2022	Door	07/27-28/2023
				Langlade	9/15/2022		

Three of these audits (Iowa, Marquette, and Saint Croix) determined that the RA had not been tracking their reclamation program expenses, which made it impossible for the DNR to determine if the program was recovering its administrative costs or running a deficit or surplus. In each case, this was an audit finding requiring corrective action, and the RAs were required to begin tracking their program expenses to determine if their current fees are reasonable or if they need to be adjusted.

The Village of Sussex no longer has any permitted mines due to a change in its political boundary with the Village of Lisbon, which effectively moved two sites outside of Sussex’s jurisdiction. Although

Sussex decided to retain their reclamation ordinance, it has not collected any fees nor incurred any administrative expenses.

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

Table 3: Regulatory Authority Revenue Relative to Administrative Expenses

Regulatory Authority (County)	Audit Date	Number of Facilities	Total Annual Fees Collected	Total Annual Administrative Expenses	Total Annual Surplus / (Deficit)	Surplus (Deficit)/ Facility
Adams	7/19/2022	10	\$9,080	\$2,387	\$6,693	\$669.30
Chippewa	5/11-12/2022	92	\$284,675	\$245,487	\$39,188	\$425.96
Clark	4/26/2023	33	\$21,310	\$21,800	(\$490)	\$14.85
Columbia	6/28/2023	35	\$17,715	\$17,966	(\$251)	\$7.17
Dane	08/16-17/2022	124	\$84,710	\$66,205	\$18,505	\$149.23
Door	07/27-28/2023	53	\$32,001	\$27,272	\$4,729	\$89.23
Dunn	4/20/2022	20	\$9,443	\$26,466	(\$17,023)	\$851.15
Eau Claire	7/15/2022	8	\$34,700	\$34,804	(\$104)	\$13.00
Florence	9/23/2021	13	\$5,910	\$5,097	\$813	\$62.54
Genesee(Twn.)	7/11/2022	2	\$620	\$590	\$30	\$15.00
Kewaunee	6/1/2021	26	\$15,226	\$10,450 (est.)	\$4,776	\$183.69
Langlade	9/15/2022	36	\$13,070	\$12,930	\$140	\$3.89
Lincoln	7/13/2022	47	\$5,890	\$16,152	(\$10,262)	\$218.34
Manitowoc	8/26/2021	55	\$90,150	\$74,500	\$15,650	\$284.55
Muskego(City)	5/18/2023	1	\$650	\$692	(\$42)	\$42.00
New Berlin(City)	6/7/2022	4	\$3,425	\$2,500 (est.)	\$925	\$231.25
Pierce	5/16/2019	40	\$14,500	\$14,500 (est.)	\$0	\$0
Polk	06/07-08/2023	66	\$27,184	\$20,998	\$6,186	\$93.73
Rusk	6/22/2021	51	\$13,920	\$13,450	\$470	\$9.22
Shawano	6/6/2019	50	\$18,592	\$22,087	(\$3,495)	\$69.90
Washburn	10/2/2019	20	\$7,075	\$6,826	\$249	\$12.45

Administrative expenses vary between RAs due to several factors. Higher administrative expenses are often due to increased RA engagement with the mining facilities in their program, performing such work as reclamation plan reviews, operator inspections, administrative compliance, and enforcement actions. Counties with a high number of active nonmetallic mines often employ staff dedicated to administering their reclamation programs. Those that do not employ dedicated staff may still incur higher administrative costs associated with contracted third-party auditors.

Lower expenses may reflect fewer staff hours allocated to inspections, compliance, and enforcement action follow up. A reason for this may include the RA being responsible for fewer mines, but it may also be indicative of a program falling short of compliance with audit performance standards.

Eight of the RAs listed in Table 3 were found to be running either a significant surplus or deficit, described as follows:

RAs with a Significant Deficit

1. **Dunn County:** A 2022 audit found that the county fee schedule was last updated 10 years prior, and the program was operating with a significant deficit of \$17,022.91 (\$851/mine). The County responded that staff were wrestling with how to recoup funds for time spent on matters such as handling complaints and unpermitted sites, and they proposed that a new fee for public records requests could help with their deficit. The DNR reiterated audit report findings that shifts in workload would likely make the largest difference in addressing the deficit while also ensuring comprehensive program administration. The County was advised to account for actual administration time (and no non-reclamation duties), as well as to consider whether any expenses are to be split toward a review fee as opposed to an annual fee, and to account for any additional expenses not included such as legal expenses, vehicle use, safety training and equipment, and other office- and IT-related expenses.
2. **Lincoln County:** At the time of the audit, Lincoln County showed a sizeable deficit in program revenue compared to expenses. Two factors were considered: adjustment of the annual fee schedule and the application of a conservation staffing grant not accounted for under the staffing resources under revenue.
The County recognized the annual fee schedule had not been adjusted for at least 10 years prior and felt the fees needed to be adjusted upwards due to inflationary costs to administer the program. However, it was noted that an adjustment to fees alone may not account for the total expenses incurred to administer the program.
The County presented the fact that Lincoln County Conservation department receives a [staffing grant](#) from the Department of Agriculture, Trade, and Consumer Protection (DATCP). This staffing grant covers 100% of the staff member's salary and allows for nonmetallic mine work if it is conservation related. This includes, but is not limited to, reclamation plan review and approval, inspections, and certificate of completion. It does not cover non-conservation related work such as assessing fees, holding public hearings, managing financial assurance and other program administrative tasks.
The County will continue to assess annual fees charged against other incurred costs not associated with conservation related work in administering the program.

RAs with a Significant Surplus

1. **Adams County:** The 2022 audit found that the Adams County program was running a \$6,693 surplus (\$669/mine). The county was required to provide justification for the surplus and take corrective actions to balance program revenue and expenses. The County response indicated that 77% of the 2022 surplus was used to purchase a drone to conduct aerial inspections; that in 2023, they used surplus funds to go towards administration costs for reviewing a modified reclamation plan, public notice requirements, landowner notifications, and training; and in 2024 and the future, Adams County plans to use surplus dollars for administrative costs, any public/legal notices, site inspections, operator report findings, mailings, office supplies, new equipment for ease of program, employee benefits/salaries, and possibly new software for tracking. The County reported that in the coming five-plus years when they have a stable, reliable, and efficient protocol for their program, they plan to revisit what the expenses should go towards and look at assessing the fee schedule they currently have in place. The County has had ongoing issues with achieving compliance and initiating reclamation. Some work to align the program more uniformly with NR 135 may affect workload level.

2. Chippewa County: At the time of the audit, Chippewa County demonstrated a sizeable surplus in program revenue compared to expenses. This was a finding in the audit report requiring corrective action. The County was directed to address the surplus and bring the program back into balance.

In response, the County provided a breakdown of expenses and a detailed annual fee and review fee schedule. Included in the expense breakdown, the County provided expenses not previously identified. This included sizeable legal expenses the County incurred as a result of several enforcement actions with operators and proceedings involving the Bankruptcy Court in Pennsylvania. The new analysis showed a turn of a sizeable deficit averaged over the previous five years, including the audit year.

Some expenses incurred did not appear to be reclamation in nature and may have been a result of administration of the program under a non-compliant ordinance. The County continues to maintain an unbalanced program of revenue to expenses. The ordinance has been amended and is now compliant with NR 135. Discussions between the County and the DNR are ongoing over what is to be considered a reasonable expense to be included in program administration.

3. Dane County: The 2022 audit findings included a surplus of \$18,505 (\$149 per mine). The County was required to balance administration of the reclamation program and provide justification and planned correction for the surplus. Dane County currently administers over 100 reclamation permits, three times the state average of 33 sites per RA. The County plans to address the surplus by increasing administrative time allocated and adjusting annual fee amounts. The County will continue to identify the best direction to balance out the program expenses to revenue but expect the actions above to account for the main variables contributing to the surplus.
4. Kewaunee County: A 2021 audit found an estimated surplus of \$183.69 per mine (\$4,776 total) based on the financial worksheet Kewaunee County provided. Program fees were set by county committee and had not been adjusted in several years. Administrative expenses had to be calculated using immediate invoices for administering the program and an estimated percentage (20%) of employee salary and fringe benefit costs since program expenses were not tracked. The County was directed to implement a more detailed tracking of program expenses to assess program administrative costs, including employee salary and fringe (normalized to percent time spent), equipment used, mileage, licenses and training, office materials and other overhead costs. The audit report required corrective action to adjust annual fees to operators as needed to keep deficit/surplus to a recommended less than \$100 per mine site, and it was noted that this was identified as a need in their 2009 audit as well.

In fall 2024, the County Conservationist/Department Head assumed responsibility for the non-metallic mining program and pledged to invest the necessary time to implement the corrective actions identified in the audit, including balancing administrative expenses and fee income.

5. Manitowoc County: A 2021 audit found the program was running at an estimated \$15,650 surplus, which is \$284/mine. The County's \$75/acre fee was established in 2001, when 500 acres were mined, and expenses were balanced with revenue; however, now that approximately 1,200 acres are now mined and less time is spent on administering the program, a significant surplus

has resulted. To try and offset the extra revenue, the County charged no review fees. Despite the surplus, 20 of 24 categories evaluated in the audit were either noncompliant with NR 135 or compliant but exposed to risk in process or method.

In the audit report, corrective action was required to ensure fees collected are used to administer the program. It was recommended that an evaluation of program administration be performed, and that administrative oversight of the reclamation program be commensurate with the number of permitted sites in the County. The County reported 55 permitted sites in 2021, which is well above the state average of 33 sites per RA statewide. The County was advised that their fee structure should be adequate to fund administration of the program as required, and that fees collected should be used to administer the program. The RA response indicated a concern that their financials fluctuate significantly from year to year because it is hard for them to anticipate how much staff time will be needed to monitor sites each year, and they believe that their annual surpluses and deficits come close to balancing out over multiple years.

6. New Berlin (City): Findings of a 2022 audit included a \$925 program surplus (\$231/mine). In the subsequent audit report, New Berlin was required to ensure the City administers a balanced program based on nonmetallic reclamation related administration costs and asked to provide justification for the surplus and a plan of corrective actions to balance the revenue to expenses. In their response, New Berlin staff stated a commitment to reviewing their fees and operations, and they determined to take a more proactive approach in their year-to-year NR 135 operations. This was to include several actions including annual review of fees to meet the goal of a more efficient and balanced program.

DNR staff continue to provide RAs with guidance for accurately recording reclamation costs and establishing a fee structure that will fund their reclamation programs without running a substantial surplus or deficit. Table 4 provides an assessment of cumulative findings for previous fee report years 2008, 2013, 2018, and 2024. Overall performance varies and a majority of RAs administer a reasonable reclamation fee structure:

**Table 4: RA Revenue Relative to Administrative Costs
Comparison between 2008, 2013, 2018, and 2024 Reports**

Category	2008	2013	2018	2024
Surplus > \$100 / permit	4 (17%)	3 (8%)	2 (9%)	6 (29%)
Generally Balanced	12 (50%)	29 (74%)	13 (62%)	13 (62%)
Deficit > \$100 / permit	8 (33%)	7 (18%)	6 (29%)	2 (9%)
Total RA's Evaluated	24	39	21	21

DNR Fee Revenue

[Section 295.15, Wis. Stats.](#), requires RAs to transfer a portion of the fee collected from each nonmetallic mine to DNR for support and oversight of RA reclamation programs. DNR’s portion is based on the acreage of the mine as established in s. [NR135.39\(3\), Wis. Adm. Code](#). This is deposited to the DNR Environmental Fund, from which an amount sufficient to cover nonmetallic mining reclamation operating expenses is allocated each year to cover DNR audit, inspection, and RA program support costs. Any revenue collected in excess of annual operating expenses remains in the Environmental Fund.

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

Table 5 below summarizes total annual DNR nonmetallic mining fee revenues, program expenditures and year-end balances for fiscal years 2019-2023.

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

Fiscal Year	DNR Fee Revenue	DNR Expenditures	Year-End Balance
2019	\$219,372	\$154,362	\$65,010
2020	\$215,500	\$134,293	\$81,207
2021	\$240,004	\$136,665	\$103,339
2022	\$232,720	\$207,869	\$24,851
2023	\$231,819	\$161,765	\$70,054
5-Year Total	\$1,139,415	\$794,954	\$344,461

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

Going forward, the DNR will continue to prioritize the allocation of fee revenues to conducting audits, developing and maintaining data management systems, developing program implementation guidance documents and training materials, and ensuring accessibility of these materials. The Department has hired a NMM Reclamation Program Specialist in October 2024 to further assist our efforts.