

PRELIMINARY DRAFT RULE LANGUAGE 12/08/2014

MNDNR SILICA SAND RECLAMATION

ADMINISTRATIVE PROCEDURES

PURPOSE OF THIS DOCUMENT: *This document contains preliminary draft language related to silica sand reclamation rules – standards. This document is intended for receiving comments by members of the Silica Sand Advisory Panel only. Please return your edits by the end of the day on Wednesday 12/17/2014. Thank you for your time and comments.*

Administrative Procedures – are the processes to deny, approve, modify, suspend, revoke, or release a reclamation plan.

POSSIBLE SUGGESTED LANGUAGE FOR ADMINISTRATIVE PROCEDURES

XXXX.0000 Administrative Procedures

Subpart 1. Purpose. The purpose of this section is to establish requirements and procedures for the processing and consideration of activities related to silica sand reclamation plans.

Subpart 2. Submission of a reclamation plan. The regulatory authority shall approve, approve conditionally, or deny a reclamation plan pursuant Subpart 4 to Subpart XXX.

Subpart 3. Reclamation plan submission. The operator of any silica sand mine shall submit and obtain an approval for a reclamation plan before beginning mining operations. The operator shall submit all of the following when making an application:

- A. The information required by XXXX.0000 through XXXX.0000 (operator information and reclamation plan)
- B. A certification that the operator will provide as a condition of the reclamation plan approval, financial assurance as required by XXXX.0000 upon granting of the reclamation plan and before mining begins.
- C. To avoid duplication, the reclamation plan and submittals required by section A, may by reference, incorporate existing plans or materials that meet the requirements of this chapter.

Subpart 4. Notice of publication. A regulatory authority that has received and assessed that the reclamation plan meets the requirements of XXXX.0000 through XXXX.0000 shall publish a public notice of the application in a qualified newspaper under Minnesota Statutes, section [331A.02](#) that is circulated in the locality of the proposed mining operation no later than 30 days after receipt of a complete reclamation plan. The notice must contain:

- A. A brief description of the mining and reclamation planned at the silica sand mine area;
- B. Mine ownership and operator;
- C. Mention the opportunity for public hearing pursuant to this section;
- D. A notice of the deadline date and contact information for filing objections;
- E. Give the locations at which the public may review the reclamation plan request and all supporting materials.

Subpart 5. Local Hearing. A regulatory authority shall provide for the opportunity for a public informational hearing on an application or request to approve a silica sand mine reclamation plan as follows:

- A. If there is hearing on local permit to mine for the silica sand mine area, the regulatory authority shall provide the opportunity at this hearing to present testimony on reclamation related matters. This opportunity shall fulfill the requirement for public hearing for a silica sand reclamation plan required by this section. The regulatory authority shall consider the reclamation-related testimony in the local permit to mine hearing in deciding on the adequacy of a reclamation plan.
- B. If there is no opportunity for a local permit to mine for the silica sand mine area as described in par A, opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principle place of business is within 600 feet (is this reasonable – why or why not. Please think of mining in both sparsely and densely populated areas) of the boundary of the parcel or parcels of land in which the silica sand mine area is located or proposed may request a public informational hearing within 30 days of the actual date of public notice under subpart X. This public hearing shall be conducted as an information hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.

Subpart 6. Objections to proposed reclamation plan. Objections related to proposed reclamation plan may be filed with the regulatory authority no later than 45 days following the notice of publication required in subpart 5.

- A. A person submitting an objection to the regulating authority shall include the following information:
 1. A statement of the person’s interest in the proposed reclamation plan;
 2. A statement of the action that the person wants the regulatory authority to take, including specific references to applicable section under parts XXXX.0000 to XXXX.0000, or the permit application; and
 3. The reasons supporting the person’s position, stated with sufficient specificity to allow the regulatory authority to investigate the merits of the person’s position.

Subpart 7. Reclamation plan approval. Unless denied pursuant to subpart 9, the regulatory authority shall approve in writing the reclamation plan submitted pursuant to subpart 4 to issue an approval of the reclamation plan for a proposed silica sand mine. The permit decision shall be made no sooner than 30 days nor later than 120 days following receipt of the complete reclamation plan that meets the requirements of XXXX.0000.

- A. The regulatory authority may approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the reclamation requirements of this chapter. The approval may not include conditions that are related to reclamation. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to XXXX.0000 prior to beginning mining.
- B. If more than one regulatory authority has jurisdiction over a single silica sand mine area, the regulatory authorities shall cooperatively issue a single approval for the reclamation plan.

Subpart 8. Reclamation plan denial. A reclamation plan shall be denied no sooner than 30 nor later than 120 days following the receipt of the complete reclamation plan if the regulatory authority finds any of the following:

- A. The applicant has, after being given an opportunity to make corrections, failed to provide an adequate reclamation plan, financial assurance, or other submittal required by this chapter or the applicable local land use ordinance of the regulatory authority.
- B. The proposed silica sand mine area cannot be reclaimed in compliance with the reclamation standards of XXXX.0000 or the applicable local land use ordinance.
- C. The applicant, or its agent, principal or predecessor has, during the course of silica sand mining in Minnesota within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to silica sand reclamation.
- D. The following may be considered in making this determination of a pattern of serious violations:
 - a. Results of judicial or administrative proceedings involving the operator or its agent, principal, or predecessor.
 - b. Suspensions or revocations of silica sand mining permits or reclamation plans.
 - c. Forfeiture of financial assurance.
- E. A denial under this subpart shall be in writing and shall contain documentation of reasons for denial.

Subpart 9. Reclamation plan modification.

- A. Reclamation plan modification by the regulatory authority. If a regulatory authority finds that, because of changing conditions, the silica sand mining site no longer is in compliance with this chapter or the applicable local land use ordinance, it shall issue an order modifying the permit. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with this chapter or the applicable local land use ordinance.
- B. Reclamation plan modification by the operator. If an operator desires to substantially modify a silica sand reclamation plan, the operator shall submit an application to modify the plan to the regulatory authority. The application shall be subject to the requirements of this subchapter. The regulatory authority that issued the permit shall take action on the application to modify it in accordance with the standards and procedures contained in this subchapter.

Subpart 10. Revocation or suspension of approved reclamation plan.

- A. The grounds for a regulatory authority to suspend or revoke a silica sand reclamation plan approved pursuant to this chapter include if the operator has done any of the following:
 - 1. Failed to submit a satisfactory reclamation plan within the time frames specified in this subchapter.
 - 2. Failed to submit or maintain financial assurance as required by this chapter.
 - 3. Failed on a repetitive and significant basis to follow the approved reclamation plan.
- B. If the regulatory authority makes any of the findings in sub. A, it may suspend a reclamation plan approval for up to 30 days. During the time of suspension, the operator may not conduct mining at the site, except for reclamation or measures to protect human health and the environment.
- C. If a regulatory authority makes any of the findings in sub. A, it may revoke its silica sand reclamation plan approval. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to XXXX.0000 to the regulatory authority. The regulatory authority may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

Subpart 11. Approval of alternate requirements.

- A. Criteria. A regulatory authority may approve an alternate requirement to the reclamation standards established in this chapter if the operator demonstrates and the regulatory authority finds that all of the following criteria are met:
 - 1. The silica sand mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternate requirement.
 - 2. Unnecessary hardship which is peculiar to the silica sand mining site or plan will result unless the alternate requirement is approved.
 - 3. Reclamation in accordance with the proposed alternate requirement will achieve the planned post-mining land use and long term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.
- B. An operator who requests an alternate requirement shall submit the request in writing as required in the applicable local land use ordinance.
 - 1. If the regulatory authority is a county or municipality, the alternate requirement shall be approved or disapproved as provided in the applicable local land use ordinance. Approval or disapproval shall be in writing and shall contain documentation of the reasons why the alternate requirement was or was not approved.
 - 2. A request for an alternate requirement may be incorporated as part of an application to issue or modify a silica sand reclamation plan.
 - 3. An applicable reclamation ordinance may provide opportunity for public informational hearing pursuant to this subchapter prior to the regulatory authority's action on a request for an alternate requirement.

Subpart 12. Duration of reclamation plan approval. The approval of a reclamation plan pursuant to this chapter shall last through the mine's operation and reclamation as described in the approved reclamation plan. If changes occur in the area to be mined, the nature of planned reclamation, or other aspects of mining require that the approved reclamation plan be amended, the operator shall apply for a modification pursuant to Subpart 10. If the mine operator is not the landowner, the permit duration cannot exceed the duration of the lease unless the lease is renewed or the permit is transferred to a subsequent lessee or the landowner pursuant to subpart 15.

Subpart 13. Annual reporting requirements.

- A. An operator shall submit an annual report for every silica sand mine site with a reclamation plan to the regulatory authority. The annual report shall include the all of the following:
 - 1. The name and mailing address of the operator
 - 2. The location of the silica sand mine site, including legal description, tax key number or parcel identification number if available.
 - 3. The identification number of the applicable local permit, if assigned by the regulatory authority.
 - 4. The acreage currently affected by silica sand extraction and not yet reclaimed.
 - 5. The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
 - 6. A plan, map or diagram accurately showing the acreage described in pars. (4) and (5).
 - 7. The following certification, signed by the operator:
"I certify that this information is true and accurate, and that the silica sand mine area described herein complies with all conditions of the applicable silica sand reclamation plan approval and Chapter XXXX.0000 of Minnesota Rules.

- B. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31.
- C. Annual reports shall be submitted by an operator for all active and intermittent mining sites to the regulatory authority for each calendar year until silica sand mining reclamation at the site is certified as complete pursuant to subpart 18 or at the time of release of financial assurance pursuant to XXXX.0000.
- D. A regulatory authority may, at its discretion, obtain the information required in sub. A for a calendar year by written documentation of its inspections of a silica sand mining site. If the regulatory authority obtains and documents the required information, the annual report need not be submitted by the operator. If the regulatory authority determines that the operator need not submit an annual report pursuant to this subsection, the regulatory authority shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the regulatory authority shall require the operator to submit the certification required in sub. A (7).
- E. A regulatory authority shall retain annual reports required by sub. A or equivalent records as provided in sub. D for 10 years after they are submitted, and shall make them available upon request by the public.

Subpart 15. Transfer of reclamation plan approval. The approval of a reclamation plan may be transferred to a new operator upon submittal to the regulatory authority of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with. The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the regulatory authority and the regulatory authority makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.

Subpart 15. Change of regulatory authority. If there is a change of regulatory authority for a silica sand mine area, the areas reclamation plan shall remain in effect and be enforceable until the plan is modified by the new regulatory authority.

The following section needs legal review, however this is a place holder to refer to existing statutes for contesting/review of local decisions. If you know of the correct statutes, please feel free to reference. Do you have additional thoughts for this section?

Subpart 17. Review of permit decisions. Any persons who meet the requirements of XXXX.0000, may obtain a contested case hearing under XXXX.0000, on a county or municipal regulatory authority's decision to approve, deny or modify a silica sand reclamation plan.

Subpart 18. Release of the reclamation plan. The request to be released from an approved reclamation plan must include the following:

- A. A declaration by the operator of how each portion of the mine area for which a release is requested has been made to comply with the requirements of parts XXXX.0000 to XXXX.0000 and the conditions placed within the local permit to mine.
- B. Identification of the ownership of the mine area
- C. A map that prepared by a qualified professional that shows the following:
 - (1) the location and status of all mining land forms and facilities created or used during the mining operation
 - (2) the areas for which the release is being requested

- (3) the areas on which postclosure maintenance is being conducted
- (4) the final topography of all mining land forms
- (5) the location, type, extent, percent coverage of vegetation that has been established
- (6) the existing and ultimate anticipated level of groundwater
- (7) the locations of safe accesses of any open water
- (8) the location of all sealed access points to underground mine workings
- (9) the location of any approved highwalls or gradients that exceed a 1:3 slopes
- (10) other tests, borings, or specified by regulatory authority within the approval of the reclamation plan.

Subpart 19. Determination by regulatory authority. The regulatory authority shall review the request for release and inspect the site to be released to determine whether all terms and conditions of parts XXXX.0000 to XXXX.0000 (place holder for standards and reclamation plan requirements) and the local permit to mine have been satisfied as required by XXXX.0000 (Financial Assurance), Subpart 8.

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