



JUNCTION  
BETWEEN  
CH30/NR340 &  
CH295/NR135  
FOR  
RECLAMATION

MARCH 19, 2025



# AGENDA AND GOALS FOR TODAY

- INTRODUCTIONS
- REVIEW JURISDICTIONS BETWEEN RECLAMATION AUTHORITIES
  - WHAT IS A POND?
  - EXAMPLE SCENARIOS
  - WHEN TO APPLY FOR A CH. 30 PERMIT
  - PERMIT LIFESPANS, PROCESS AND FINANCIAL ASSURANCE
- TIMELINE – HOW DID WE GET HERE?
  - ENGAGEMENT EFFORTS
- COORDINATION, CONSISTENCY AND COMMUNICATION
- RESOURCES AVAILABLE
- QUESTIONS?



WATERWAYS & WETLANDS  
WATER MANAGEMENT SPECIALIST  
(WMS) MINING EXPERT  
LANE LOVELAND

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November 2021 – New WW Position –  
Waterways Mining Expert

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Promote consistency across the state

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Collaboration with regulatory partners (WI  
Counties/Regional Planning Commissions)

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Seek increased future efficiencies







## INTEGRATION SERVICES – NONMETALLIC MINE RECLAMATION COORDINATOR

ROBERTA WALLS

- STATEWIDE RECLAMATION COORDINATOR SINCE 2018
- OVERSIGHT TO COUNTY AND LOCAL RECLAMATION AUTHORITIES (RA)
- CONDUCT AUDITS FOR UNIFORM STATEWIDE ADMINISTRATION
- TRAINING TO NEW RA STAFF



# NONMETALLIC MINE RECLAMATION JURISDICTION AUTHORITY

Wis Stats 295  
NR135 Wis. Adm. Code

County/Municipality  
Administered

DNR Oversight

Exempt if Ch 30 waterway  
authority exists (in part or  
in whole)

Wis Stats Ch. 30

NR340 Wis Administrative  
Code – Applies to  
Chapter 30 NMM permits.





# CHAPTER 30 COVERS MANY DIFFERENT ACTIVITIES – A FEW MINING RELATED EXAMPLES INCLUDE:

Creation of a pond within 500 feet of, or connected to, a navigable water under s. 30.19(1g)(a) and (am), Wis. Stats.

Changing the course or straightening a navigable stream under s. 30.195, Wis. Stats.

Dredging or the removal of material from the bed of a navigable stream or lake under s. 30.20, Wis. Stats;



# WATERWAY JURISDICTION DETERMINATIONS

- WDNR
- KEYWORD - NAVIGABILITY

## WATERWAY JURISDICTION DETERMINATIONS

### DNR AND LOCAL GOVERNMENT JURISDICTION

**Navigable Waterway** - A navigable waterway is defined through case law as any waterway that has a defined bed and bank, and on which it is possible to float a canoe or small watercraft on a recurring basis.

**Ordinary High Water Mark** - The Ordinary High Water Mark (OHWM) is defined through case law as the point on the bank or shore of a waterway up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

**DNR Jurisdiction (Below the OHWM)** - The DNR Waterways Program, under the public trust doctrine and state statute, has jurisdiction over permitting for projects that propose impacts in navigable waterways below the OHWM. This includes pier placement, shoreline erosion control structures, dredging, and other projects.

**Local Government Jurisdiction (Above the OHWM)** - Local governments, including counties, cities, villages, and towns make their own navigability and ordinary high water mark determinations to implement their shoreland zoning ordinances. For projects with proposed impacts above the OHWM, contact your [local zoning office](#) [exit DNR] to determine if a permit application is necessary.

- See the [Navigability Factsheet \[PDF\]](#) to learn how to identify navigable waterways.
- See the [OHWM Factsheet \[PDF\]](#) to learn how to locate the OHWM on a waterway.
- See a [DNR recorded training video for Waterway Determinations](#).
- See [Waterways Permitting Process](#) to review waterways permit options.



# WHAT IS A POND?

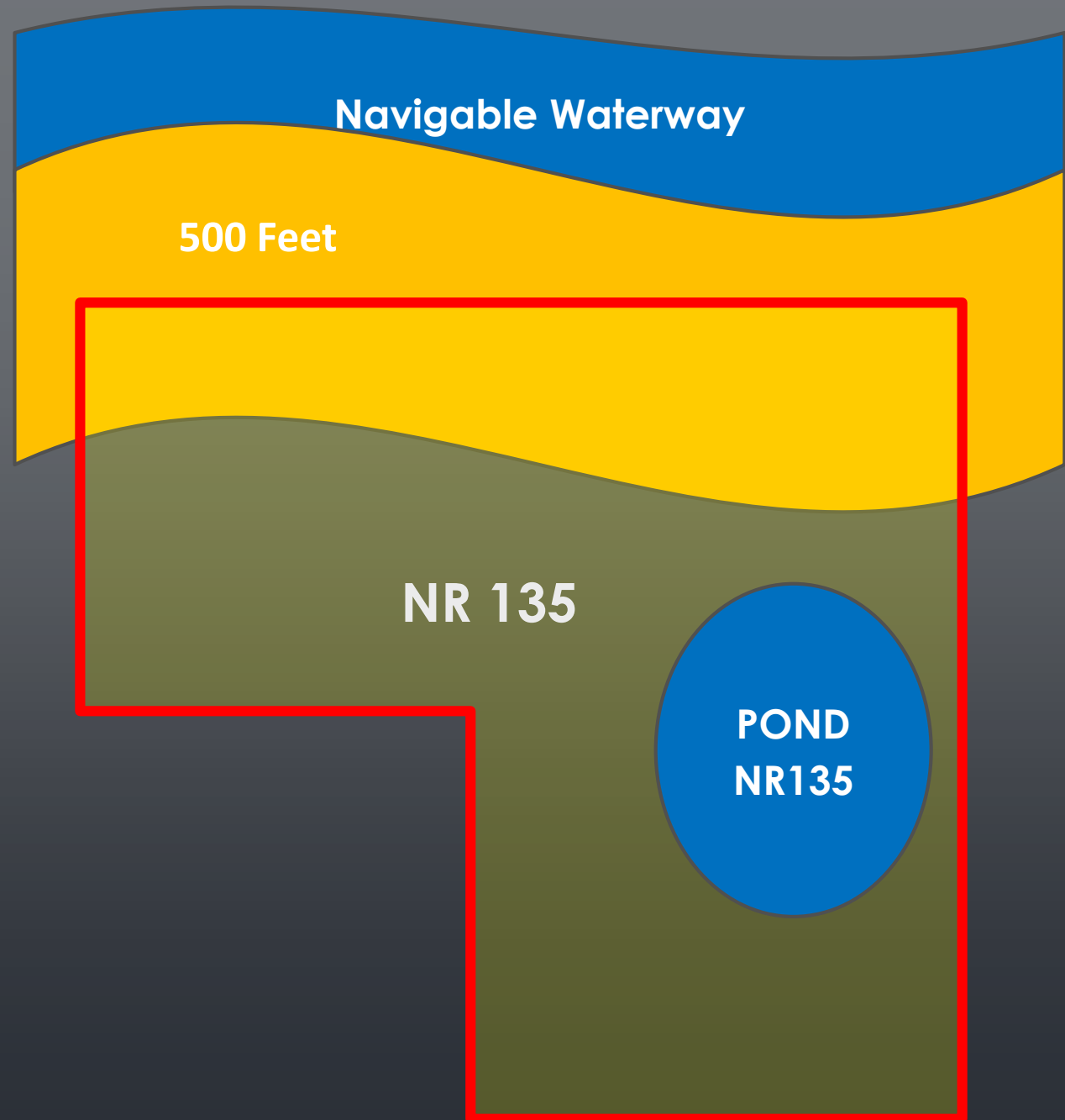


- 30.19 – ENLARGEMENT AND PROTECTION OF WATERWAYS
- 30.19(1B)(A) – “ARTIFICIAL WATER BODY” DEFINITION
  - MEANS A BODY OF WATER THAT DOES NOT HAVE A HISTORY OF BEING A LAKE OR STREAM OR OF BEING PART OF A LAKE OR STREAM.
  - BASICALLY – ANY BODY OF WATER THAT WAS NOT THERE BEFORE.



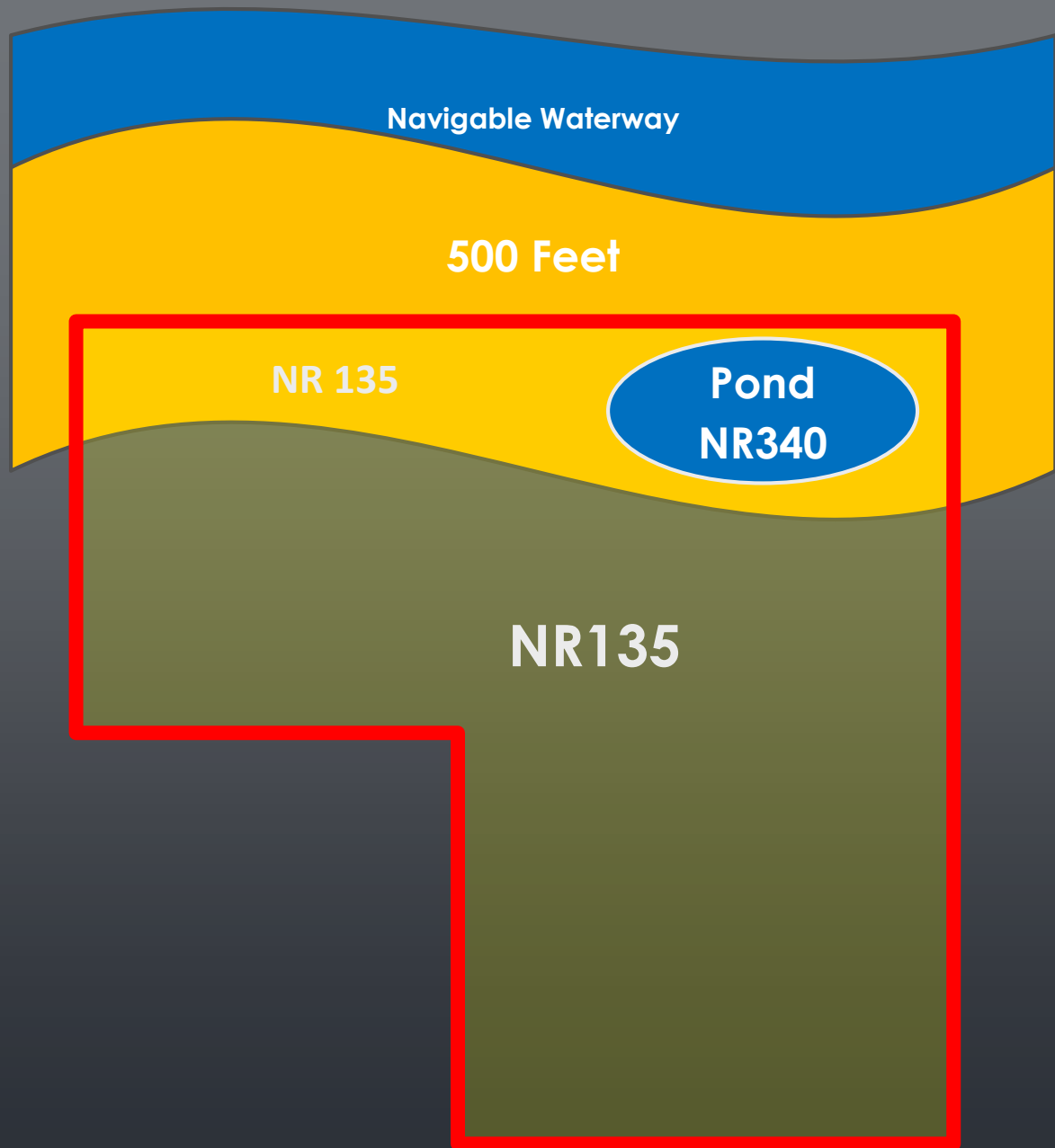
# Example # 1

## NR135

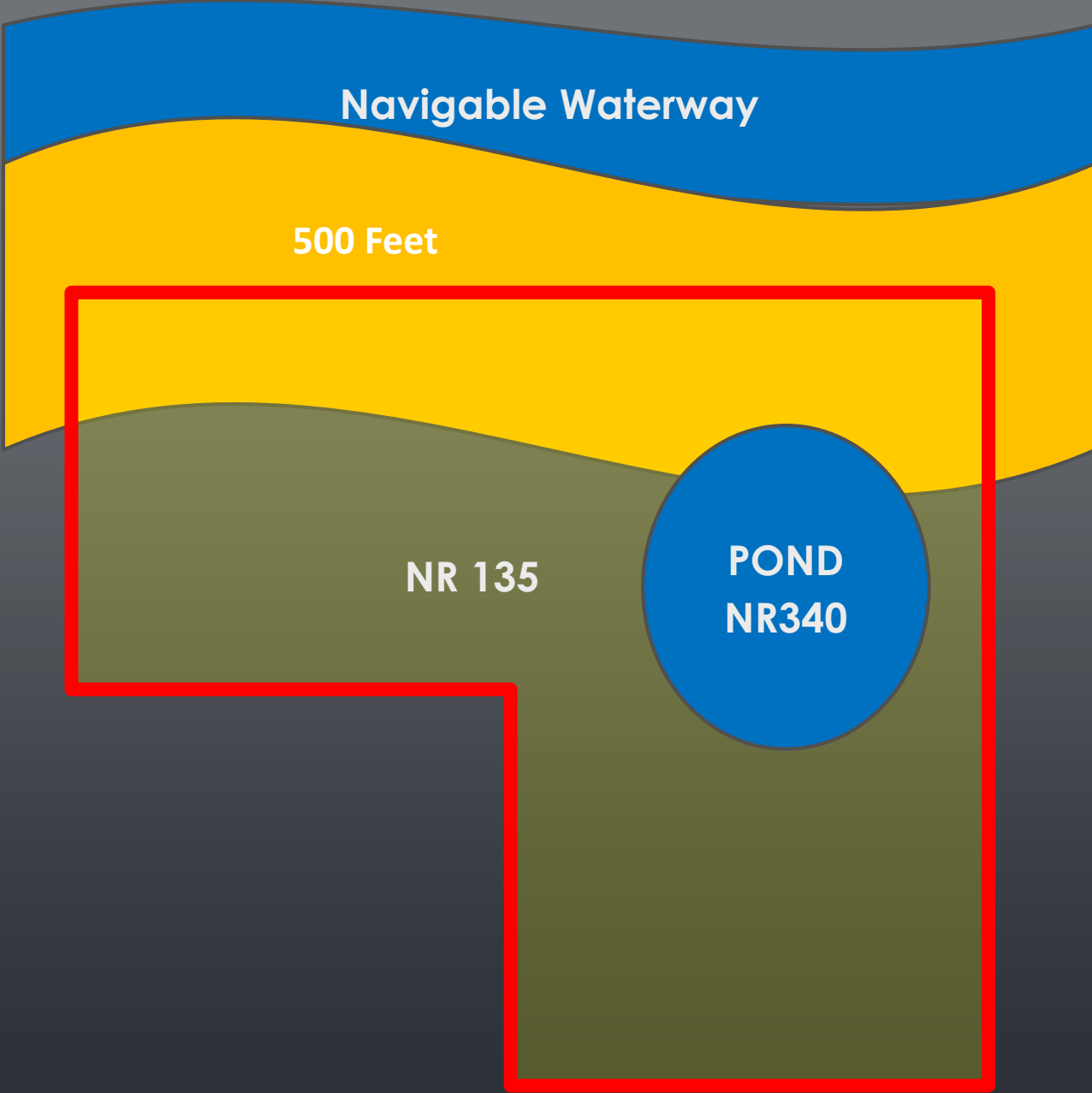


# Example # 2

## Ch. 30/NR340







**Example # 3**  
**Ch. 30/NR340**

# WHEN TO APPLY FOR A CH. 30 PERMIT?

## QUESTIONS TO ASK:

- WILL MINING INTEND TO CREATE A POND?
- WHEN WILL POND BE CREATED?
- IS WATER PERSISTENT? (IN GROUNDWATER?)
- ARE YOU DEWATERING?

## CONSIDERATIONS:

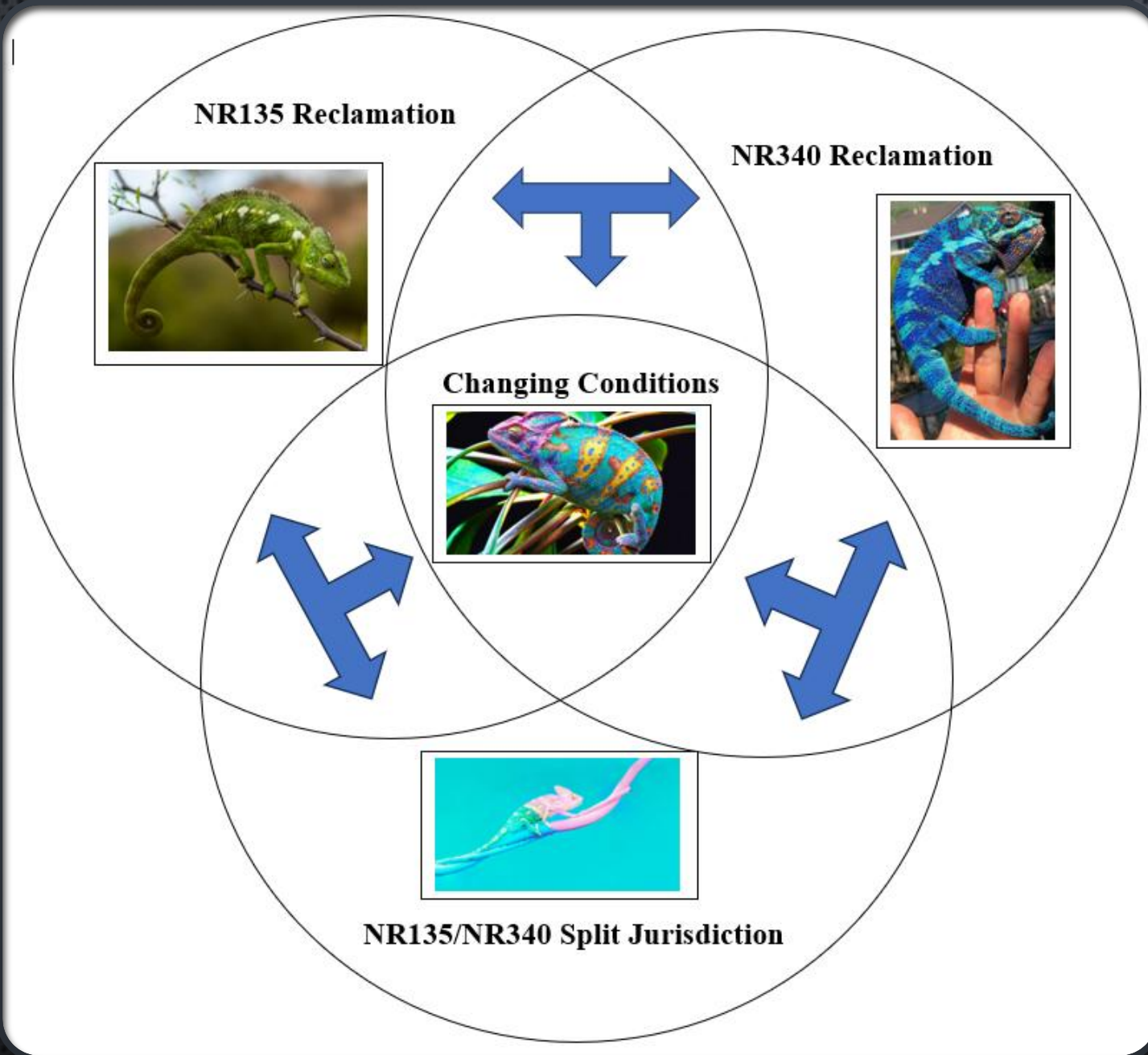
- EVENTUALLY THERE WILL BE A POND, BUT MAYBE NOT REACHING GROUNDWATER TABLE FOR 10-20 YEARS.
- CH 30 PERMIT LIFESPAN (8-YEAR MAX)
- SUPPLY AND DEMAND (CESSATION, PROJECT NEEDS ECT.)

CONCLUSION – A SITE MAY BE PERMITTED UNDER NR135 (COUNTY RECLAMATION PERMIT) UNTIL READY TO OBTAIN A CH 30 RECLAMATION PERMIT.

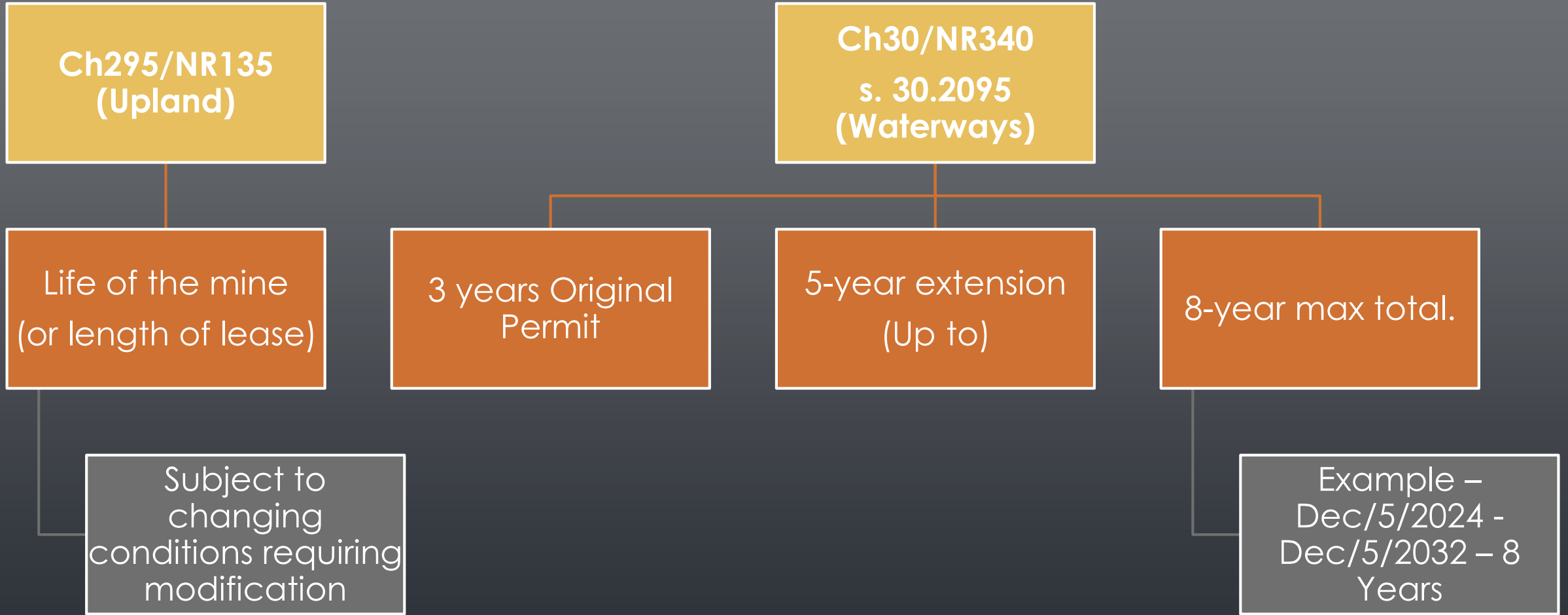




# COLORS OF RECLAMATION



# PERMIT LIFESPANS





# CH. 30 NMM INDIVIDUAL PERMIT PROCESS



Permit Application Deemed Complete

DNR Staff – 30 days to Review

- Staff may make one request for additional information
- Once Deemed complete (Answers Satisfied) – Counts as date of closure

DNR Posts Notice of Pending Application (NoPA) to DNR Website after date of closure – 30 Day waiting Period – Take public comment and/or requests for a public hearing

DNR holds Hearing – If no Hearing – DNR has 30 days to Issue Permit Decision

Conclusion – 30 days – 30 days – 30 Days

# NR135 WIS. ADM. CODE PERMIT PROCESS

Permit Application Deemed Complete



County/Municipality Staff – 30 days to Public Notice

- Opportunity for information hearing on reclamation must be conducted with any Zoning hearing
  - A hearing must be requested during 30-day notice period if no zoning exists
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County/Municipality must make permit decision within 60 following any informational hearing held



County/Municipality cannot issue permit sooner than 30 days, nor later than 90 days (or up to 120 days if hearing held)

# 135 VS 340 FINANCIAL ASSURANCE

	135	340
Amount	<p>RA determined. Based on actual cost of the RA to hire a contractor to reclaim the site to the approved plan given the current site conditions.</p>	<p>The larger of \$2000/acre or \$0.25/cu yd (adjusted from 1989 dollars).</p> <p>Example: \$2,000/acre in 1989 equates to \$5091/acre in 2024 (US Inflation Calculator)</p>
Held By	<p>RA</p> <p>Reviewed periodically to address changing conditions and costs.</p>	<p>DNR</p> <p>Reviewed upon renewal or when modifications/expansions</p>
Release	<p>Operator notifies County/Municipality – partial or full</p> <p>RA determines compliance within 60 days</p> <p>Financial assurance released with Certificate of Completion</p>	<p>Operator notifies DNR – full completion</p> <p>Final inspection no earlier than a year or later than 2 years after completion of reclamation.</p>



# WHAT ABOUT SITES THAT NOW NEED TO CHANGE PERMITS?

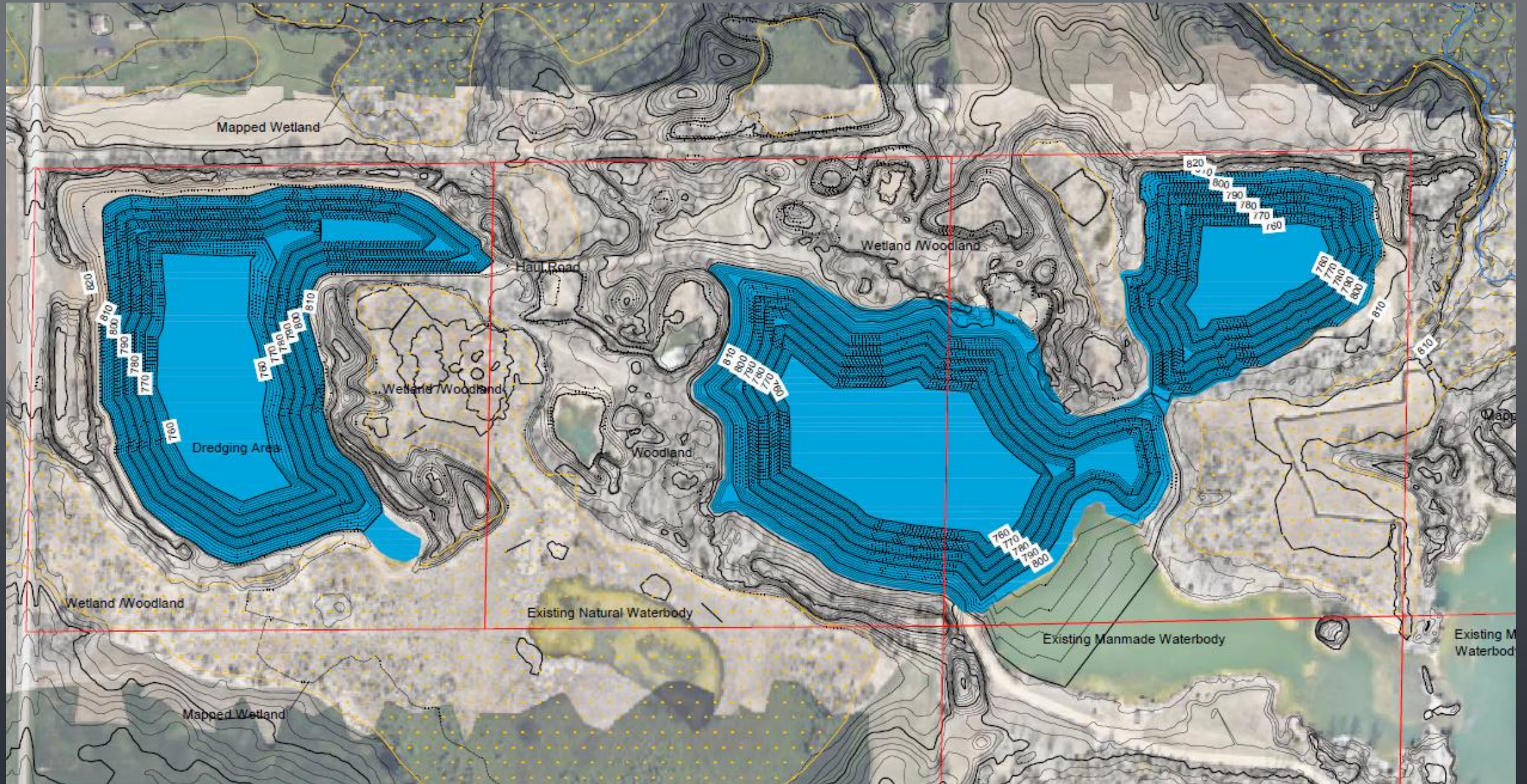
Sites that were previously permitted under NR135 now *MAY* require some, or all, of the site be permitted under Ch. 30/NR340.

Sites that were previously permitted under Ch. 30 entirely, may now only cover the pond area when new Chp 30 Permits are required.





# EXAMPLE







- WE ARE AWARE THIS NEWS HAS BEEN A TRANSITION
- WE ARE AWARE OF THE CHALLENGES THESE NEW INTERPRETATIONS CREATE
- WE ARE ALWAYS LOOKING INTO BETTER WAYS TO ADDRESS THESE CHALLENGES
- CONCLUSION – UNINTENDED CONSEQUENCES OF LEGISLATIVE CHANGES FROM 2011 ACT 167.
  - THESE ARE THE LAWS THAT ARE CURRENTLY IN PLACE.
  - THIS IS THE REALITY OF THE SITUATION, AND WE ARE BEING OPEN AND HONEST ABOUT THAT.
  - CURRENT ONGOING DISCUSSIONS WITH AGGREGATE PRODUCERS OF WI (APW)

# WHY DOES IT MATTER? (NR135 OR CH. 30?)

- A FEW THINGS CH. 30 MAY LOOK AT:
  - 1) WATER QUALITY
    - POTENTIAL CONNECTIONS TO WATERWAYS
    - POND IS CONSIDERED AN ENLARGEMENT OF A WATERWAY (ENVIRONMENTALLY SENSITIVE AREAS) – WETLANDS/FLOODPLAIN
  - 2) FLOODPLAIN
    - POTENTIAL FUTURE FISH ENTRAPMENT - PUBLIC ACCESS?
    - STOCKPILING
  - 3) OPERATIONAL CONTROLS
    - NR340.05 - OPERATION SCHEDULE
    - MINING METHODS, LOADING, TRANSPORTATION, ETC.





# HOW DID WE GET HERE? TIMELINE



**Pre- 2011** – Ch. 30/NR340 had the ability to cover entire site (grading authority)

**2011 Act 167** – Grading Authority exempt for NMM Ch. 30/NR340 when a stormwater permit OR shoreland zoning permit is issued.

**2014 – 2014** – WDNR Guidance Document (PUB-W 1689-2014): “Applicability of Ch. NR135 and Chapter 30/NR340 Wis. Adm. Codes to Non-Metallic Mine Sites.”

**2011-2021** – Period of transition

**November 2021** – WDNR Waterways hires WMS Mining Expert to bring waterway consistency across the state.

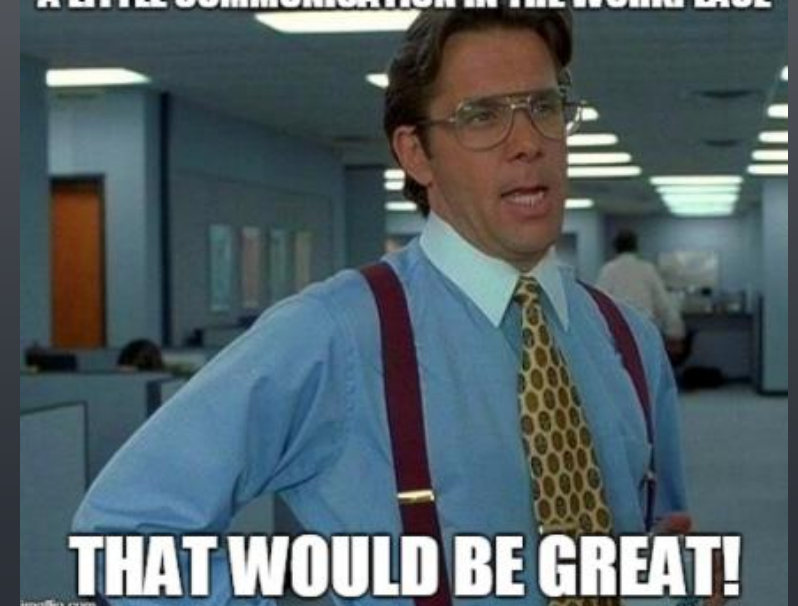


# COORDINATION & COMMUNICATION

- WI COUNTIES 72 COUNTIES, 21 LOCAL RA'S –
  - 92 DIFFERENT RA'S TOTAL
- PLANNING COMMISSIONS- (ECRPC, SWRPC)
- PROPERTY OWNERS
- INTERNAL PROGRAMS
- EXTERNAL AGENCIES
- CONSULTANTS & MINING OPERATORS!



**A LITTLE COMMUNICATION IN THE WORKPLACE**



**R**

# ENGAGEMENT EFFORTS THUS FAR....

- NEW WATERWAYS WMS STATEWIDE MINING EXPERT (NOVEMBER 2021)
- ANNUAL NMAC MEETINGS
- WLWCA - NMM RECLAMATION JURISDICTIONS TRAINING – APRIL 2022
  - BIG OUTREACH TO ALL RA'S (PZ AND CONSERVATION STAFF)
- NMM PRE-APPLICATION MEETINGS
  - WITH OPERATORS, COUNTY OFFICIALS (BOTH ZONING AND CONSERVATION) AND CONSULTANTS, PROPERTY OWNERS.
- CONTINUOUS COORDINATION WITH PLANNING COMMISSIONS.
  - SOME COUNTIES CONTRACT WITH PLANNING COMMISSIONS TO RUN THEIR NR135 NMM PROGRAMS.
- COUNTY AUDITS
- DECEMBER 2024 APW CONFERENCE!
- ONGOING APW MONTHLY DISCUSSIONS
- 2025 SPRING WCCA CONFERENCE! Woo Hoo! 😊



# KEY TAKEAWAY POINTS.....

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1) Jurisdictions can be complex, nuanced, and dynamic. (Case by case basis with many factors involved). **WILL there be a pond within 500' of a navigable waterbody?**

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2) **Communication and collaboration are key** between Counties, municipalities, operators, consultants, Planning Commissions, etc.

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3) **We want to work with you!** We are here to help! Please Contact us! 😊





## RESOURCES AVAILABLE

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WI Land + Water (WLWCA) – Reclamation 101  
Training – Recorded Presentation

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2014 Guidance Document - **(PUB-W 1689-2014)**

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DNR Website “Mining”

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Roberta Walls – WDNR EA Integration Services

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Erik Flesch – WDNR EA Integration Services

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Lane Loveland – WDNR Waterways

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# QUESTIONS?

ARE YOU AWAKE?

THANK YOU FOR LISTENING.... 😊

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**R/L**