

*NONFERROUS METALLIC MINING
FREQUENTLY ASKED QUESTIONS (FAQs)*

Counties often face common questions regarding nonferrous metallic mining. Below are responses to the common questions counties may face.

1. Q: May a county explicitly prohibit nonferrous metallic mining in its zoning code?

A: Perhaps. A county may explicitly prohibit nonferrous metallic mining in its zoning code, or it may effectively prohibit nonferrous metallic mining by not including it as a permitted use or a conditional use. Counties must also be mindful of equal protection issues. *See Section VII/9 - Zoning Ordinances/Permitted Uses and Equal Protection* in the Nonferrous Metallic Mining Regulation Handbook for more information.

2. Q: May a county use a development moratorium of nonferrous metallic mining if it does not have sufficient time to pass a nonferrous metallic mining ordinance prior to the effective date of Act 134 on July 1, 2018?

A: No. The Wisconsin Statutes expressly prohibit counties from using development moratoria. *See Section XI - Development Moratoria* in the Nonferrous Metallic Mining Regulation Handbook for more information.

3. Q: May a county require a local agreement with a mine operator?

A: It depends. If a county has a zoning ordinance, yes. If a county has a licensing ordinance, maybe. If a county does not have a zoning ordinance or a licensing ordinance, most likely no. *See Section X - Local Agreements* in the Nonferrous Metallic Mining Regulation Handbook for more information.

4. Q: May a county recover its costs from an operator of a proposed nonferrous metallic mine?

A: Yes, so long as the costs are reasonably related to the nonferrous metallic mine application, pursuant to Wis. Stat. § 66.0628. Fee recovery provisions may also be set forth in a local agreement. *See Section X – Local Agreements* in the Nonferrous Metallic Mining Regulation Handbook for more information.

5. Q: May a county impose environmental regulations on nonferrous metallic mining?

A: It depends. Environmental regulations may be preempted by state or federal regulations, and it is not recommended that a county duplicate environmental regulations. However, if a county feels environmental regulations are necessary to protect the public's health, welfare and safety, such regulations must not be preempted, must be narrow, and must explicitly reference the public harm that the regulation is intended to address. For more information regarding preemption and other environmental regulation issues, *see* the Nonferrous Metallic Mining Regulation Handbook's *Section IX/4 - Environmental Regulatory Considerations When Are Counties Preempted From Adopting Local Environmental Regulations?*

6. Q: What if a county receives a complete application for a nonferrous metallic mining operation before it has adopted a zoning code or other regulatory ordinance? Is the county “stuck” with the nonferrous metallic mine?

A: It depends. Whether an applicant obtains a vested right in a particular use depends upon several factors, including the type and completeness of an application, and what the regulations are (if any) at the time the applicant submits a complete application. *See Section VII-6 Zoning Ordinances/Vested Rights* in the Nonferrous Metallic Mining Regulation Handbook for more information.

7. Q: May a county permit nonmetallic mining but prohibit nonferrous metallic mining?

A: It depends. A county may permit nonmetallic mining but prohibit nonferrous metallic mining as long as the county does not violate a nonferrous metallic mining operator’s right to equal protection. A county must treat applicants in similar circumstances, with no reasonable basis for different treatment, equally. However, if there is a reasonable basis for the different treatment of nonmetallic mining and nonferrous metallic mining, there is likely no denial of equal protection. *See Section VII/9 - Zoning Ordinances/Equal Protection* in the Nonferrous Metallic Mining Regulation Handbook for more information.