

Enrolled 22
PROPOSED ORDINANCE 156-22

AMEND WAUKESHA COUNTY CODE OF ORDINANCES TO CREATE NEW CHAPTER
TO IMPLEMENT NONMETALLIC MINING RECLAMATION

WHEREAS, Subchapter I of Chapter 295 Wisconsin Statutes and Wisconsin Administrative Code NR 135 require every county in the state to adopt and enforce a Nonmetallic Mining Reclamation Ordinance, which was included as a 2001 goal for the Department of Parks and Land Use – Land Resources Division; and,

WHEREAS, the department formed an Ordinance Workgroup to assist with drafting the Waukesha County Nonmetallic Mining Reclamation Ordinance, which completed the task on May 9, 2001; and,

WHEREAS, the draft ordinance would only regulate the reclamation of mines and does not address operational issues for mines such as property setbacks, noise control, hours of operation, visual screens or the location of new mines; and,

WHEREAS, the draft ordinance is not intended to impair or interfere with any existing mine reclamation requirements that have been established for nonmetallic mines through local zoning prior to the effective date of the ordinance; and,

WHEREAS, the Land Resources Division presented the draft ordinance to the Waukesha County Mineral Extraction Advisory Committee on June 24, 2001 and to communities and the general public on June 3, 2001 during an informational meeting/public hearing; and,

WHEREAS, adopting an ordinance will establish uniform performance standards for mine reclamation, protect the environment and allow for other post-mining uses.

THE COUNTY BOARD OF SUPERVISORS OF WAUKESHA COUNTY ORDAINS:

SECTION I. That a new chapter of the Waukesha County Code of Ordinances shall be created and shall read as follows:

PART I - GENERAL PROVISIONS

Section 1. Title.

The title of this chapter is Waukesha County Nonmetallic Mining Reclamation Ordinance.

Section 2. Purpose and Intent.

The purpose of this chapter is to adopt and implement effective reclamation requirements for nonmetallic mines in Waukesha County in compliance with uniform statewide standards under Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes. The reclamation requirements are intended to rehabilitate nonmetallic mining sites, protect the environment and allow for other post-mining land uses. This chapter is not intended to impair or interfere with any existing reclamation requirements that

have been established for nonmetallic mines through local zoning prior to the effective date of this ordinance. This chapter is also not intended to interfere with any existing zoning rules or regulations relating to the location, operation or end land use of a nonmetallic mining facility.

Section 3. Statutory Authority.

This chapter is adopted under the authority of Sections 59.51 and 295.13(1), Wisconsin Statutes and Section NR 135.32, Wisconsin Administrative Code.

Section 4. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is unclear, the county shall interpret the intent of the provision to be consistent with the above noted statute and administrative code.

Section 5. Severability.

Should a court of competent jurisdiction declare any portion of this chapter unconstitutional or invalid, the remainder of this chapter shall not be affected.

Section 6. Applicability.

1. The requirements and standards of this chapter apply to all operators of nonmetallic mining sites within Waukesha County that conduct any mining activity on or after August 1, 2001, except for the following:
 - (a) those sites that meet at least one of the exemption criteria under Sec. 7;
 - (b) those sites where the majority of the site is located within a city, village or town that has adopted similar ordinance provisions pursuant to section 295.14 Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code; or
 - (c) those sites where, prior to the effective date of this chapter, a reclamation plan that is in compliance with this chapter had been prepared and approved to comply with conditions of local zoning. For these sites, the county will enforce the approved reclamation plan unless the applicable city, village or town adopts an ordinance in compliance with Chapter NR 135 Wisconsin Administrative Code.
2. The requirements of this chapter apply to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in Sec. 17.

Section 7. Exemptions.

This chapter does not apply to the following:

1. Those portions of a nonmetallic mining site not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001;
2. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads;
3. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining;
4. Grading conducted to restore land following a flood or natural disaster;
5. Nonmetallic mining, excavations or grading by a person solely for domestic or farm use at that persons residence or farm;
6. Nonmetallic mining at sites that affect less than one acre of total area over the life of the mine;
7. Dredging for navigational purposes, to construct or maintain a farm drainage ditch, to maintain water depth in an existing pond or storm water management facility or for the remediation of environmental contamination, and the disposal of spoils from these activities;
8. Subject to the conditions under Sec. 7.9, those sites or portions of a site subject to reclamation standards through other state regulations, including:
 - (a) Nonmetallic mining subject to Wisconsin Department of Natural Resources water quality regulations under Sec.s. 30.19, 30.195 or 30.20, Stats., and complies with Chapter NR 340, Wisconsin Administrative Code;
 - (b) Excavations subject to the permit and reclamation requirements of Sec.s. 30.30 or 30.31, Stats.
 - (c) Any mining activity subject to ch. 293, Stats., which is related to metallic mining.
 - (d) Any activities required to prepare, operate or close a solid waste disposal facility under ch. 289, Stats., or a hazardous waste disposal facility under ch. 291, Stats., that are conducted on the property where the facility is located. This exemption does not apply to off-site mining activities, such as obtaining minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
 - (e) Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or

part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.

- i. This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
 - ii. If a nonmetallic mining site covered under this subsection is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, this exemption still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
9. The county may require documentation, such as a map of the affected area and certification from the applicable regulatory authority, prior to acknowledging that the site meets certain exemption criteria described under Sec. 7.8.

Section 8. Administration.

The provisions of this chapter shall be administered by the Waukesha County Department of Parks and Land Use - Land Resources Division, herein referred to as the county.

Section 9. Definitions.

In this chapter:

1. "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the county pursuant to Sec. 22.
2. "Applicable reclamation ordinance" means a nonmetallic mining reclamation ordinance, including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and subchapter I of ch. 295, Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority. If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Chapter NR 135, Wisconsin Administrative Code.
3. "Borrow site" means an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.

4. "Contemporaneous reclamation" means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.
5. "County" means the Waukesha County Department of Parks and Land Use - Land Resources Division.
6. "Environmental pollution" has the meaning in s. 295.11(2), Stats.
7. "Existing mine" means a nonmetallic mine where nonmetallic mining takes place on August 1, 2001.
8. "Financial assurance" means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in Sec. 17 and is sufficient to pay for reclamation activities required by this chapter.
9. "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.
10. "Municipality" means any city, town or village.
11. "Nonmetallic mineral" means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.
12. "Nonmetallic mining" or "mining" means all of following:
 - (a) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
 - (b) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to stockpiling of materials, blending mineral aggregates or nonmetallic minerals

with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

13. "Nonmetallic mining reclamation" or "reclamation" means the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this chapter, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.
14. "Nonmetallic mining refuse" means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.
15. "Nonmetallic mining site" or "site" means all contiguous areas of land used or proposed to be used for purposes related to nonmetallic mining after August 1, 2001, including the following:
 - (a) The location where nonmetallic mining is proposed or conducted.
 - (b) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
 - (c) Areas where nonmetallic mining refuse is deposited.
 - (d) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
 - (e) Areas where grading or regrading is necessary to conduct nonmetallic mining or to carry out an approved nonmetallic mining reclamation plan.
 - (f) Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.
16. "Operator" means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
17. "Registered geologist" means a person who is registered as a professional geologist pursuant to ss. 443.037 and 443.09, Stats.
18. "Registered professional engineer" means a person who is registered as a professional engineer pursuant to ss. 443.04 and 443.09, Stats.

19. "Replacement of topsoil" means the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this chapter.
20. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, Stats., or source material, special nuclear material or by-product material, as defined in s. 254.31 (1), Stats.
21. "Topsoil" means the surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.
22. "Topsoil substitute material" means soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.
23. "Unreclaimed acre" or "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under Sec. 33B. However the terms unreclaimed acre or unreclaimed acres do not include any areas described below:
- (a) Those areas where reclamation has been completed and certified as reclaimed under Sec. 33B.
 - (b) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 - (c) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
 - (d) Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
 - (e) For purposes of fees under Sec. 32, those areas within a nonmetallic mining site which the county has determined to have been successfully reclaimed on

an interim basis in accordance with Sec. 33B.

PART II- STANDARDS

Section 10. Standards.

All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained below.

A. General Standards.

1. Refuse and Other Solid Wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to chs. 289 and 291, Stats.
2. Area Disturbed and Contemporaneous Reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by mining and to provide for reclamation of portions of the mining site while mining continues on other portions of the site.
3. Public Health, Safety and Welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.
4. Habitat Restoration. When the land use specified in the reclamation plan, approved pursuant to this chapter, requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.
5. Compliance with Environmental Regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control.
Note: Other applicable environmental, zoning or land use regulations may include Chapters NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 340, 500-590, and 812, Wisconsin Administrative Code, chs. 30 and 91, Stats., and section 404 of the Clean Water Act (33 USC sec. 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project, so long as they do not require or directly regulate the reclamation of nonmetallic mining sites as addressed under Subchapter I of Chapter 295, Stats .
6. Surface Water and Wetlands Protection. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR 102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface

of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

7. Groundwater Protection.

- (a) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
- (b) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Chapter NR 140, Wisconsin Administrative Code to be exceeded at a point of standards application defined in that chapter.

8. Topsoil Management.

- (a) Removal. Topsoil and topsoil substitute material shall be removed, protected and redistributed to support reclamation and site stabilization. Topsoil shall be managed as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation to the approved post-mining land use. Topsoil and topsoil substitute material removal shall be performed, as required by the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.
- (b) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.
- (c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

9. Final Grading and Slopes.

- (a) All areas affected by mining shall be graded in accordance with the reclamation plan approved pursuant to this chapter to achieve a stable and safe condition consistent with the post mining land use. The reclamation plan may designate areas such as stable slopes and

rock faces which do not require final grading.

- (b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless alternative requirements are approved under Sec. 22, and stable slopes can be demonstrated based on site-specific engineering analysis. The engineering analysis shall show that a minimum acceptable slope stability factor is attainable at a steeper slope and that the post-mining land use specified in the reclamation plan is not adversely affected. When the slope occurs at the edge of a body of water, this approved slope shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.
- (c) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

10. Topsoil Redistribution for Reclamation. Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this chapter in a manner that minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

11. Revegetation and Site Stabilization. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this chapter, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

12. Assessing Completion of Successful Reclamation.

- (a) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released under Sec. 33 shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be consistent with pre-existing soil conditions and the reclamation plan.
- (b) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - i. On-site inspections by the county or its agent;
 - ii. Reports from the operator presenting results obtained during reclamation evaluations including summarized data on revegetation,

photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
iii. A combination of inspections and reports.

- (c) In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
- (d) Revegetation success may be determined by:
 - i. Comparison to an appropriate reference area;
 - ii. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - iii. Comparison to an approved alternate technical standard.
- (e) Revegetation using a variety of plants indigenous to the area is favored.

13. Intermittent Mining. Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or off-site deposition of sediments is occurring, and financial assurance for reclamation pursuant to Sec. 17 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

14. Maintenance. During the period of the site reclamation, after the operator has stated that reclamation is complete, but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this chapter.

PART III - PERMITTING

Section 11. Nonmetallic Mining Reclamation Permit Application.

A. Permit Application Required. All operators of nonmetallic mining sites that operate on or after August 1, 2001 shall apply for a reclamation permit from the county. All applications for reclamation permits under this section shall be submitted on a form provided by the county, including the following information:

1. A brief description of the general location and nature of the nonmetallic mine.
2. A legal description of the property on which the nonmetallic mine is located or proposed, including the tax parcel identification number(s).
3. The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.

4. The name, address and telephone number(s) of the person(s) or organization serving as the operator and the primary contact for the review of reclamation plans.
5. Indication if the applicant is applying for an automatic permit in accordance with Sec.s. 11B or 11C.
6. Indication if the applicant is requesting an expedited review in accordance with Sec.13.
7. A certification by the operator of his or her intent to comply with the nonmetallic mining reclamation standards established under Sec.10, except for permits applied for under Sec. 11C.

B. Automatic Permit for Existing Mines. The operator of any existing nonmetallic mining site in operation on August 1, 2001 may apply for an automatic reclamation permit from the county by providing all the items listed below no later than August 1, 2001:

1. A completed permit application form as required in Sec. 11A.
2. The first year's annual fee, as required by Sec. 32.
3. A certification, on a form provided by the county, and signed by the operator that he or she will provide the county with a complete reclamation plan required by Sec. 14 and financial assurance required by Sec. 17 between 1 to 3 years from application time, in accordance with a schedule to be established by the county under Sec. 19B.

C. Automatic Permit for Local Transportation-Related Mines.

1. An operator of a nonmetallic mine may apply for an automatic permit under this subsection for any borrow site that meets all of the following criteria:
 - (a) It will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
 - (b) It is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with a municipality;
 - (c) It is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;
 - (d) It is not a commercial source;
 - (e) It will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and
 - (f) It is not otherwise exempt from the requirements of this chapter under Sec. 7.

2. To request an automatic permit under this section, the applicant shall submit the following:
 - (a) A completed permit application, on a form provided by the county, in accordance with Sec. 11A(1) through 5;
 - (b) Written documentation of the terms and conditions of the contract with respect to reclamation of the proposed borrow site, including the name, address and phone number of the person charged with oversight and enforcement of the reclamation provisions.
 - (c) Written evidence to show that the borrow site and its reclamation is in compliance with applicable zoning requirements, if any.
 - (d) The first year's annual fee, in accordance with a fee schedule established by the county under Sec. 32. Mines permitted under this subsection shall not be subject to the plan review fee provided in Sec. 31.

Section 12. New Mines and Other Permits.

The operator of any nonmetallic mining site that engages in or plans to engage in mining that will begin after August 1st, 2001, or which has not applied for an automatic reclamation permit pursuant to Sec. 11B shall submit all the items specified below prior to commencing nonmetallic mining activities:

1. A completed application form, in accordance with Sec. 11A;
2. The plan review and annual fees required by Sec. 31 and Sec. 32 respectively;
3. A reclamation plan conforming to Sec. 14; and
4. A certification, on a form provided by the county, and signed by the operator that he or she will provide, as a condition of the reclamation permit, financial assurance, as required by Sec. 17.

Section 13. Expedited Review.

Any permit applicant may request expedited review in writing during the permit application process under this section. The following shall apply to these requests:

1. The request shall state the need for such expedited review and the date by which such expedited review is requested.
2. The additional fee for expedited reviews, established by the county under Sec. 31, shall be paid at the time of application.
3. Following receipt of a request for an expedited review, the county shall inform the applicant of the estimated date for decision on issuance of the permit.
4. If the applicant then elects not to proceed with the expedited review, the

additional expedited review fee shall be returned.

5. Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to Sec. 18. This subsection does not impose an obligation upon the county to act upon a permit application under this subsection by a specific date.

Section 14. Reclamation Plan.

Reclamation Plan Requirements. All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of this section. To avoid duplication of effort, existing reclamation plans may be submitted to satisfy the requirements of this section, including those previously approved by a town, city, village or county.

1. **Plan Standards.** All reclamation plans shall comply with the standards of Sec. 10. All plan view maps shall be at a scale of 1 inch equals no more than 100 feet, or at a scale approved by the county. Cross-section and profile drawings shall be of sufficient scale and detail to clearly show the required elements described below. All maps shall meet national map accuracy standards for the scale they are drawn and meet county standards for horizontal and vertical control.
2. **Existing Site Information.** The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:
 - (a) Plan view maps and /or cross-section drawings of the nonmetallic mining site including the general location (at a smaller scale), property boundaries and dimensions, the areal extent, delineation, labeling and measurement (in acres) of the general use of each area on the site (see "nonmetallic mine" definition), the geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the approximate elevation of ground water, the location of surface waters, existing drainage patterns, and existing topography, with spot elevations and contours at 2 foot contour intervals, except where slope is greater than 30%, where the contour interval may be 5 feet or other contour interval as approved by the county.
 - (b) Delineate from existing maps, biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site. These maps shall also delineate existing shorelands, floodplains, wetlands, and primary environmental corridors, as defined by the county.

Note: Pre-mining topsoil conditions may be estimated using the Soil Survey of Waukesha County, available from the Waukesha County Department of Parks and Land Use - Land Resources Division, unless the mining was conducted prior to the soil survey.
 - (c) Location of manmade features on or near the site.
 - (d) For existing mines, the plan view map or cross-section drawing

under par. (a) must also show the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.

Note: Some of or all of the information required above may be shown on the same submittal, i.e. the site map required by par. (a) may also show topography required by par. (c).

3. Post-mining Land Use.

- (a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed.. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.

Note: A proposed post-mining land use is necessary to determine the type and degree of reclamation needed to correspond with that land use. The post mining land use will be key in determining the reclamation plan. Final slopes, drainage patterns, site hydrology, seed mixes and the degree of removal of mining-related structures, drainage structures, and sediment control structures will be dictated by the approved post-mining land use.

- (b) Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to s. 91.75, Stats., shall be restored to agricultural use.

Note: Section 91.75(9), Stats., contains this requirement. Section 91.01(1), Stats., defines the term "agricultural use".

4. Reclamation Measures. The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:

- (a) A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures.
- (b) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.
- (c) A plan view map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.
- (d) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.
- (e) The estimated square yards or acres and cost, based on average costs, to complete the reclamation for each stage of the project or the entire site if reclamation staging is not planned.
- (f) A revegetation plan which shall include timing and methods of

seed bed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting, matting, and any other techniques needed to accomplish soil and slope stabilization.

- (g) Quantifiable standards, in accordance with Sec. 10, for revegetation to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Other standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.
- (h) A plan and, if necessary, a narrative showing and explaining erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize soil erosion and pollution of surface and groundwater.
- (i) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to Sec. 33C and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in Sec. 10 and sequence of interim and final reclamation.

Note: Some of the information required by this subsection may be combined to avoid duplication, e.g. a single map may show anticipated post-mining topography required by par. (c) as well as structures and roads as required by par. (d).

5. Plan Criteria for Success. The reclamation plan shall contain criteria for assuring successful reclamation in accordance with Sec. 10A(12).

6. Certification of Reclamation Plan.

- (a) The operator shall provide the county a signed certification that reclamation will be carried out in accordance with the proposed reclamation plan. The operator shall also provide the county with written documentation that the landowner and lessee, if different from the operator, concurs with the reclamation plan and will allow its implementation..
- (b) For the following situations, the landowner and lessee, if different from the mine operator, are not required to submit a written certification in accordance with par. 6(a). The operator shall provide written evidence that the landowner and lessee, if different from the operator, have been provided with a written copy of the reclamation plan, and that:
 - i. The mine operator has submitted a reclamation plan for an existing mine in accordance with Sec. 11B, or
 - ii. The operator has submitted a reclamation plan for a new or reopened mine in accordance with Sec. 12 which is located on land for which a lease agreement or memorandum of lease between the landowner and

applicant was recorded prior August 1st, 2001.

Section 15. Review and Approval of Reclamation Plan.

The county shall approve, conditionally approve or deny the reclamation plan submitted under this section in accordance with the procedures under Sec. 19.

Section 16. Operator Documentation.

Once a reclamation plan is approved by the county under Sec. 19, the operator shall keep a copy of the approved plan at the mine site or, if not practicable, at the operator's nearest office or place of business.

Section 17. Financial Assurance.

A. Financial Assurance Requirements.

1. **Applicability.** Except for the State of Wisconsin, a state agency, board, commission or department, a county or municipality, and permits under Sec. 19D (for local transportation-related mines), all operators of nonmetallic mining sites subject to this chapter shall prepare and submit a proof of financial assurance that meets the following requirements.
2. **Notification.** The county shall provide written notification to the operator of the amount of financial assurance required under Sec. 17A(4).
3. **Filing.** Following approval of the nonmetallic mining reclamation plan, and as a condition of issuing the permit, the operator shall file a financial assurance with in the county. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, and the reclamation plan. Financial assurance shall be payable exclusively to the county, unless a cooperative arrangement is made under Sec. 17A(7).
4. **Amount and Duration of Financial Assurance.** The amount of financial assurance shall equal as closely as possible the cost to the county of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The county shall consider the estimated costs under Sec.14(4)(e) in determining the amount of the financial assurance. The amount of financial assurance shall be reviewed periodically by the county to assure it equals outstanding reclamation costs. Any financial assurance filed with the county shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The county may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use stated in an approved reclamation plan. This may extend beyond the permit if required

to accomplish successful and complete implementation of the reclamation plan.

5. **Form and Management.** Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the county. Possible forms of financial assurances may include, but are not limited to bonds, cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest earned from the financial assurance shall be paid to the operator. Certificates of deposit, letters of credit and other types of assurances that may contain a maturity date shall be automatically renewable or have other assurances provided to the county at least 30 days before the maturity date. Financial assurance arrangements may include, at the discretion of the county, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.
6. **Multiple Projects.** Any operator who obtains a permit from the county for 2 or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the county.
7. **Multiple Jurisdictions.** In cases where more than one regulatory authority has jurisdiction, a cooperative financial assurance arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site subject to the provisions of this chapter.
8. **Release.** The county shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site upon certifying the completion of reclamation requirements in accordance with Sec. 33.
9. **Forfeiture.** Financial assurance shall be forfeited if any of the following occur:
 - (a) A permit is revoked under Sec. 27 and the appeals process has been completed.
 - (b) An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.
10. **Cancellation.** Financial assurance shall provide that it may not be cancelled or otherwise expired by the surety or other holder or issuer

without a 90 day notice to the county in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the county a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

11. **Changing Methods of Financial Assurance.** The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to Sec. 17A(13). The operator shall give the county at least 60 days notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the county.
12. **Bankruptcy Notification.** The operator of a nonmetallic mining site shall notify the county by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.
13. **Adjustment of Financial Assurance.** Financial assurance may be adjusted when required by the county. The county may notify the operator in writing that adjustment is necessary and the reasons for it. The county may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.
14. **Net Worth Test.**
 - (a) Only an operator that meets the definition of "company" in s. 289.41 (1) (b), Stats., may use the net worth method of providing financial assurance.
 - (b) The operator shall submit information to the regulatory authority in satisfaction of the net worth test requirements of s. 289.41 (4), Stats. The criteria in sec.s. 289.41 (6) (b), (d), (e), (f), (g), (h) and (i), Stats., shall apply.
 - (c) An operator using the net worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with s. 289.41 (6), Stats.
 - (d) Determinations under the net worth test shall be done in accordance with s. 289.41 (5), Stats.
 - (e) In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this chapter.

Section 18. Public Notice and Right of Hearing.

A. Public Notice Requirements

1. **Required.** The requirements of public notice under Sec. 18B shall only

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apply to the following nonmetallic mining permit applications:

- (a) Those for all new nonmetallic mines, meaning those mines that did not exist prior to August 1, 2001; and
 - (b) Those for existing nonmetallic mining operations that:
 - i. Prepare a new reclamation plan to comply with Sec. 14; or
 - ii. Make changes to previously approved reclamation plans under par. (2)(b), where the changes are substantial in their scope or impact on the landscape, as determined by the county.
2. Not Required. The public notice requirements under Sec. 18B shall not apply to the following:
- (a) Any permit application for a mine under Sec.19D (for local transportation-related mines).
 - (b) Permit applications for any existing mine where the county determines that:
 - i. An existing reclamation plan submitted by the applicant has been previously approved by a town, city, village or county; and
 - ii. The reclamation plan under Sec.18A(2)(b)(i) complies with the requirements of Sec. 14 without the need for changes that are substantial in their scope or impact on the landscape, as determined by the county.

B. Public Notice Procedure.

Subject to the applicability provisions under Sec. 18A, the county shall, prior to issuing a permit under Sec.19, provide public notice and the opportunity for a public informational hearing as described below:

1. Public Notice.

- (a) Within 30 days after the county has received all the application materials under Sec. 11, the county shall publish a class 2 public notice in the official newspaper of the county.
 - i. The notice shall do all of the following: Provide a brief description and location of the proposed nonmetallic mining and reclamation planned;
 - ii. Announce the date, time and place of any scheduled zoning hearing, where the public is offered the opportunity to submit comments to the county concerning the reclamation plan. If no zoning hearing is scheduled, the notice shall explain the procedures for requesting a public hearing in accordance with Sec. 18B(2); and
 - iii. Provide the location and times that the public may review the reclamation plans that have been prepared to satisfy the requirements of this chapter.
- (b) The county shall send a copy of the notice under par. (a) to the applicable local zoning board(s), local planning organization(s), and owners of land within 300 feet of the boundaries of the parcel

or parcels of land on which the site is located.

- (c) The requirements of public notice under this section may be satisfied through a joint public notice with the local zoning authority.
2. Hearing. The county shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit. The informational hearing may be conducted jointly with a local zoning authority.
- (a) If a zoning-related hearing is conducted on the nonmetallic mine site, the county shall provide the opportunity at this hearing for the public to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The county shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.
 - (b) If there is no opportunity for a joint zoning-related hearing on the nonmetallic mine site as described in par. (a), the county shall only be required to conduct a hearing if a request is received in accordance with par. i below.
 - i. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. If a request is received by any of these persons within 30 days of the actual date of public notice under Sec. 18B(1), the county shall hold a public hearing in accordance with pars. ii and iii below.
 - ii. A public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested, in accordance with par. i. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.
 - iii. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site

Section 19. Issuance of a Nonmetallic Mining Reclamation Permit.

A. Permit Required. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1st, 2001 without a reclamation permit issued pursuant to this chapter. All applications for permits under this chapter shall be processed by the county in accordance with the applicable procedures described below.

B. Automatic Permit for Existing Mines. For applications meeting all of the requirements under Sec. 11B, the following provisions shall apply:

1. The county shall issue an automatic permit within 30 days of such application.
2. As a condition of the automatic permit, the county will establish a deadline between 1 to 3 years from the permit date, by which the operator shall submit to the county the following additional items:
 - (a) A reclamation plan that meets the requirements of Sec. 14, which may include the submittal of an existing reclamation plan; and
 - (b) Financial assurance that meets the requirements of Sec. 17.
3. The county may grant a reasonable extension to the deadline established in Sec. 19B(2) when it finds extenuating circumstances exist.
4. Review of additional items submitted under Sec. 19B(2) shall follow the procedures under Sec. 19C at the time of their submittal.

C. New Mines and Other Permits.. Permit applications that are received under the requirements of Sec. 12, and follow-up submittals under Sec. 19B(2) shall be reviewed and acted on in accordance with the following procedures:

1. Within 90 days of receipt of all the required application materials the county shall:
 - (a) Determine if the applicable requirements of this chapter have been met;
 - (b) Determine if there is a need for additional information, or changes to the reclamation plans or other materials, to comply with this chapter;
 - (c) Determine if public notice is required pursuant to Sec. 18A for previously approved reclamation plans that require changes to comply with this chapter; and
 - (d) Notify the applicant of the results of the determinations under Sec. 19C(1)(a) through (c), including what additional information or changes are needed. Notification shall be in written or electronic form, unless otherwise waived by the applicant.
2. If the county determines that all of the requirements of this chapter have been met, and no public notice is required under Sec. 19C(1)(c), all the submittals shall be approved by the county and a permit shall be issued upon compliance with the financial assurance provisions under Sec. 17.
3. If the county approves all the materials submitted, and determines that a public informational hearing is required under Sec. 18A the county shall publish a public notice in accordance with Sec. 18B.
4. Any resubmittals under this subsection shall be subject to the procedures in Sec. 19C(1) through (3).
5. The county may approve the reclamation plan and other submittals with

conditions that it deems necessary to ensure compliance with the requirements of this chapter.

6. The county may deny a permit application in accordance with sub 19E.

D. Automatic Permit for Local Transportation-Related Mines. The following conditions and procedures shall apply to all permit applications that are received under Sec. 11C:

1. The county shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under Sec. 14.

2. The county shall accept the contractual provisions in lieu of the financial assurance requirements in Sec. 17.

3. The public notice and hearing provisions of Sec. 18 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.

Note: Local public notice and hearing requirements, if any, regarding zoning decisions still apply.

4. Within 7 days of receipt of the information under Sec. 19D(2), the county shall determine if all of the conditions of this subsection have been met and shall notify the applicant of the results of this determination in written or electronic form. If all conditions have been met, the county shall issue an automatic permit. If all the conditions have not been met, any resubmittals shall be subject to the same timeline for review.

5. Mines permitted under this subsection shall pay an annual fee to the county as provided in Sec. 32, but shall not be subject to the plan review fee provided in Sec. 31.

6. Notwithstanding Sec. 30, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

E. Permit Denial. An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

1. An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in Sec. 19, if the county finds any of the following:

- (a) The applicant has, after being given an opportunity to make corrections, failed to provide to the county an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter.
- (b) The proposed nonmetallic mining site cannot be reclaimed in compliance with

the reclamation standards contained in this chapter, Chapter NR 135, Wisconsin Administrative Code or Subchapter I of Chapter 295, Wisconsin Statutes.

- (c) The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin 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 nonmetallic mining reclamation. The following may be considered in making this determination of a pattern of serious violations:
 - i. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.
 - ii. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Chapter NR 135, Wisconsin Administrative Code.
 - iii. Forfeitures of financial assurance.
- (d) A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

- 2. A decision to deny an application to issue a reclamation permit may be reviewed under Sec. 35.

Section 20. Expedited Reviews.

Expedited reviews requested under Sec. 13 are subject to the same determinations and other procedures described under Sec. 19C. The timelines for expedited reviews shall be as established by the county under Sec.13(3).

Section 21. Permit Conditions.

Any decision under this section may include conditions as provided below:

- 1. The county may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this chapter.
- 2. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to Sec. 17 prior to beginning mining.

Section 22. Alternative Requirements.

A. Scope of Alternative Requirements Approvable. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in Sec. 10. The county may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and the county finds that all of the following criteria are met:

- 1. The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.
- 2. Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.

3. Reclamation in accordance with the proposed alternative 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. Procedures.

1. The operator of a nonmetallic mining site requesting an alternate requirement in Sec. 22A shall demonstrate all the criteria in Sec. 22A. This shall be submitted in writing to the county.
2. The county shall, within 90 days of receipt of the request, approve, conditionally approve or deny the request in writing, based on the counties determination of compliance with the criteria under Sec. 22A. The written response shall include reasons and documentation as to why the request was or was not approved.
3. A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.

C. Notice to Wisconsin Department of Natural Resources. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within 10 days of issuance.

D. Permit Duration.

1. A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to Sec. 40.
2. If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to Sec. 23.

Section 23. Permit Transfer.

A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the following conditions:

1. A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the county 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.
2. The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the county and the county 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.

Section 24. Previously Permitted Sites.

For any nonmetallic mining site that had a reclamation permit previously issued by another regulatory authority pursuant to Chapter NR 135, Wisconsin Administrative Code, and later becomes subject to reclamation permitting authority of the county, the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by the county pursuant to Sec. 25A.

Note: This could happen if, for example, a municipality's program was terminated by the municipality or revoked by the Department - in such cases nonmetallic mine sites would revert to a county program.

PART IV - ADMINISTRATION

Section 25. Permit Modification.

A. By the County. A nonmetallic mining reclamation permit issued under this chapter may be modified by the county if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter. Such modification shall be by an order modifying the permit in accordance with Sec.'s. 31 through 44. 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 Chapter NR 135, Wisconsin Administrative Code or this chapter.

B. At the Operator's Option. If an operator of any nonmetallic mine that holds a reclamation permit issued under this chapter desires to modify such permit or reclamation plan approved under this chapter, it may request such modification by submitting a written application for such modification to the county on a form provided by the county. The application for permit or plan modification shall be acted on using the standards and procedures of Sec. 19.

C. Required by the Operator. The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the reclamation plan approved pursuant to this chapter. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

Section 26. Review.

All actions by the county on permit modifications requested or initiated under this section are subject to review under Sec. 35.

Section 27. Permit Suspension and Revocation.

A. Grounds. The county may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds the operator has done any of the following:

1. Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
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.

Section 28. Procedures. If the county finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in Sec. 27A, it may issue a special order suspending or revoking such permit as set forth in Sec. 40.

Section 29. Consequences.

1. If the county makes any of the findings in Sec. 27A, it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the county pursuant to Sec.'s 31 through 44.
2. If the county makes any of the findings in Sec. 27A, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to the county. The county may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation plan.

Section 30. Annual Operator Reporting.

A. Contents and Deadline. All operators shall submit annual reports to the county, on forms provided by the county, that satisfy the requirements of this section.

1. **Contents.** The annual report required by this section shall include all of the following:
 - (a) The name and mailing address of the operator.
 - (b) The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number if available.
 - (c) The identification number of the applicable nonmetallic mining permit, if assigned by the county.
 - (d) The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
 - (e) The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
 - (f) An aerial photo or map, with a scale of 1 inch equals no more than 100 feet or other scale approved by the county, accurately showing the acreage described in Sec. 30A(1)(d) and (e).
 - (g) The following certification, signed by the operator:
"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Chapter NR 135, Wisconsin

Administrative Code."

2. **Deadline.** The annual report shall cover activities for a calendar year and be submitted within 60 days following the end of the year.
3. **When Reporting May End.** Annual reports shall be submitted to the county by an operator for all active and intermittent mining sites for each calendar year until reclamation at the site is certified as complete pursuant to Sec. 33B.

B. Inspection in Lieu of Report. The county may, at its discretion, obtain the information required in Sec. 30.A for a calendar year by written documentation or an inspection it completes during a calendar year, as set forth in this subsection. If the county obtains and documents the required information, the operator does not need to submit the annual report. If the county determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the county shall require the operator to submit the certification required in Sec. 30A(1)(g).

C. Retention of Annual Reports. Annual reports submitted under Sec. 30A or inspection records that replaces them under Sec. 30B shall be retained by the county for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

Section 31. Plan Review Fees.

A. Amount and Applicability. All permit applicants under Sec. 12 shall submit a non-refundable plan review fee in accordance with the fee schedule shown in Table 4, Section NR 135.39(5) Wisconsin Administrative Code, unless modified by the county through the annual budget process. No other permit applicants under this chapter shall be subject to this fee. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Sec. 25.

B. Expedited Plan Review Fee. Any permit applicant requesting expedited review by the county under Sec. 13 shall pay the expedited review fee established by the county through the annual budget process. Such fee shall be in addition to that required in Sec. 31A.

Relation to Annual Fee. Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be in addition to the annual fees collected by the county under Sec. 32.

Section 32. Annual Fees.

A. Areas Subject to Fees, Procedures and Deadline.

1. **General.** Operators of all nonmetallic mining sites subject to reclamation

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permits issued under this chapter shall pay annual fees to the county. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under Sec. 32B and a share for the county under Sec. 32C. The county share shall equal as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

2. **Areas Subject to Fees.** Fees paid under this section shall be calculated by the county based on the number of "unreclaimed acres", as defined in Sec. 9.23, present on a nonmetallic mining site at the end of each calendar year. For new or reopened mines that submit a reclamation permit application under Sec. 12, the first year's annual fee shall be based upon the unreclaimed acres that are anticipated at the end of that calendar year.
3. **Procedures and Deadlines.** Fees assessed pursuant to this section shall be paid to the county no later than March 1 of the subsequent year, except when required at the time of permit application under Sec. 11B and Sec.12.
4. **Fees Prior to Reclamation Certification.** If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the county pending certification of completed reclamation pursuant to Sec. 33B. Upon such certification the county shall refund that portion of the annual fee that applies to the reclaimed areas.

B. Wisconsin Department of Natural Resources Share of Fee. Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in NR 135. This share of the fees shall be used to support the department's statewide cost to inspect, enforce, consult with and audit local nonmetallic mining reclamation programs under NR 135.

C. The County's Share of Fee. Fees paid under this section shall also include an annual fee due to the county, which shall be as shown in Table 2, Section NR 135.39(4) Wisconsin Administrative Code unless modified by the county through the annual budget process. By state law, county fees under this section may only be used to support reasonable expenses associated with administration of this chapter.

D. Regulatory Reporting and Documentation. The county shall provide an annual report to the Wisconsin Department of Natural Resources by March 31 of each year. The report shall include the information required as part of the implementation of the reclamation program pursuant to Chapter NR 135, Wisconsin Administrative Code.

Section 33. Completed Reclamation - Reporting, Certification and Effect

A. Reporting of Completed Reclamation. The operator of a nonmetallic mining site may report to the county completion of reclamation or interim reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter. Any report under this subsection

shall be made on a form provided by the county.

B. Certification of Completed Reclamation.

1. The county shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing of one of the following:
 - (a) Reclamation or interim reclamation is not yet complete;
 - (b) It is not possible to assess whether reclamation or interim reclamation is complete due to weather conditions, snow cover or other relevant factors;
 - (c) Reclamation or interim reclamation is complete in a part of the mine; or
 - (d) Reclamation or interim reclamation is fully complete.
2. If it is determined under Sec. 33A that reclamation or interim reclamation is complete, including revegetation as specified in a reclamation plan that conforms with the standards contained in Sec. 10(12), the county shall issue the mine operator a written certificate of completion for the applicable area.

C. Effect of Reclamation Certification. If reclamation is certified by the county as complete under Sec. 33B for part or all of a nonmetallic mining site, then:

1. No future annual fees shall be assessed under Sec. 32 for the area so certified.
2. The financial assurance required by Sec. 17 shall be released or appropriately reduced in the case of completion of final reclamation for a portion of the mining site.
3. For sites which are certified as interim reclaimed under Sec. 33B financial assurance for reclaiming the certified area may be reduced only if the county determines that the balance is sufficient to ensure final reclamation of the entire site.

D. Effect of Inaction Following Report of Completed Reclamation.

If the county provides no written response within 60 days, as required by Sec. 33B for an area of the mine site reported as reclaimed or interim reclaimed, any annual fee paid to the county for the affected area under Sec. 32 shall be refunded.

Section 34. Permit Termination.

When all final reclamation required by a reclamation plan conforming to Sec. 14, and required by this chapter, is certified as complete pursuant to Sec. 33B, the county shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

Section 35. Appeals.

Any permitting decision or action made by the county under this chapter may be

reviewed as set forth in this section. Notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on the county's decision to issue, deny or modify a nonmetallic mining reclamation permit.

PART V - ENFORCEMENT

Section 36. **Enforcement.**

The following provisions shall apply to the enforcement of this chapter.

Section 37. **Right of Entry and Inspection.**

For the purpose of ascertaining compliance with the provisions of this chapter, any authorized officer, agent, employee or representative of the county may inspect any nonmetallic mining site subject to this chapter as provided below:

1. No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of the county who presents appropriate credentials to inspect the site for compliance with, this chapter.
2. Any person who enters the site under this right of inspection shall be responsible for obtaining training and providing their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

Section 38. **Violations.**

Any violation of this chapter shall be subject to any or all of the enforcement provisions under this section.

Section 39. **Enforcement Orders.**

The county may issue orders, including an order to cease all activity regulated under this chapter, until full compliance with the provisions of this chapter is obtained by the operator.

Section 40. **Suspending or Revoking a Permit.**

The county may issue a special order suspending or revoking a nonmetallic mining reclamation permit pursuant to Sec. 27.

Section 41. **Review of Orders.**

A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under s. 68.11, Stats., notwithstanding the provisions of sec's. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats.

Section 42. **State or County Enforcement.**

The county may submit any order issued under this section to abate violations of this chapter to a district attorney, corporation counsel, municipal attorney or the

attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.

Section 43. Forfeiture of Financial Assurance.

The county may use the financial assurance under Sec. 17 to ensure compliance with the reclamation plan and this chapter through private contracts or force account work..

Section 44. Penalties.

Any violation of, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by Sec. 14 may result in forfeitures of not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order issued under this section is suspended, stayed or enjoined, this penalty does not accrue.

SECTION II. This ordinance shall be effective upon approval and publication.

SECTION III. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Waukesha, Wisconsin, as an addition or amendment thereto and shall be appropriately renumbered to conform to the numbering system contained therein.

SECTION IV. Any code section or part of a section in conflict with this ordinance is hereby repealed and declared null and void and of no effect.

AMEND WAUKESHA COUNTY CODE OF ORDINANCES TO CREATE NEW CHAPTER
TO IMPLEMENT NONMETALLIC MINING RECLAMATION

Presented by:
Land Use, Parks and
Environment Committee

Approved by:
Executive Committee

Paul G. Vrakas
Paul G. Vrakas, Chair

James T. Dwyer
James T. Dwyer, Chair

Pauline T. Jaske
Pauline T. Jaske

Patricia A. Haukohl
Patricia A. Haukohl

James Jeskewitz
James Jeskewitz

Kenneth C. Herro
Kenneth C. Herro

Walter L. Kolb
Walter L. Kolb

Mareth K. Kipp
Mareth K. Kipp

Karen J. McNelly
Karen J. McNelly

Richard L. Manke
Richard L. Manke

Daniel F. Meissner
Daniel F. Meissner

Duane Stamsta
Duane Stamsta

Absent
Ronald V. Rydberg

Paul Vrakas
Paul Vrakas

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: July 27, 2001, Patricia E. Madden
Patricia E. Madden, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓
Vetoed: _____

Date: 8-1-01, D. M. Finley
Daniel M. Finley, County Executive

FISCAL NOTE

AMEND WAUKESHA COUNTY CODE OF ORDINANCES TO CREATE NEW CHAPTER TO IMPLEMENT NONMETALLIC MINING RECLAMATION

This Ordinance creates a new chapter in the County Code for the regulation of nonmetallic mining reclamation. Sections 31 and 32 of the new chapter include provisions for various fees, for which the amount collected annually will depend on the number and acreage of sites being reclaimed. The Parks and Land Use Department estimates the annual additional revenues at about \$10,000 for budget planning purposes. The additional staff effort associated with inspecting sites and reviewing permit applications will be absorbed within the Department's existing budget.



Lawrence M. Dahl
Accounting Services Manager

LMD
7/3/01

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-07/24/01

(ORD) NUMBER-1560027

1 K. HERRO.....AYE
3 D. STAMSTA.....AYE
5 J. MARCHESE.....AYE
7 J. JESKEWITZ.....AYE
9 S. WOLFF.....AYE
11 B. TESMER.....AYE
13 E. LA MONTE.....AYE
15 D. SWAN.....AYE
17 J. BEHREND.....AYE
19 C. SEITZ.....AYE
21 W. KOLB.....AYE
23 E. KRAUS.....AYE
25 K. CUMMINGS.....AYE
27 D. PAULSON.....AYE
29 J. MAAS.....AYE
31 V. STROUD.....AYE
33 P. GUNDRUM.....
35 K. McNELLY.....AYE

2 C. WILSON.....AYE
4 D. MEISSNER.....AYE
6 D. BROESCH.....AYE
8 J. DWYER.....AYE
10 P. HAUKOHL.....AYE
12 J. WILLIAMS.....AYE
14 J. LA PORTE.....
16 R. MANKE.....AYE
18 J. ARNDT.....
20 M. KIPP.....AYE
22 G. BRUCE.....AYE
24 R. RYDBERG.....
26 P. VRAKAS.....AYE
28 P. JASKE.....AYE
30 M. THOMAS.....AYE
32 C. WICHGERS.....AYE
34 R. SINGERT.....AYE

TOTAL AYES-31

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS_____

TOTAL VOTES-31