

This model ordinance is offered by the St. Croix River Association as guidance for municipalities in Wisconsin. It is designed to be in compliance with all state laws and regulations, but it is not legal advice. A municipality should consult their own counsel before adopting any part of this ordinance.

Wisconsin Model Nonmetallic Mining Ordinance

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I. Introduction

A. TITLE, STATUTORY AUTHORITY, AND EFFECTIVE DATE

1. Title

- a. This ordinance shall be cited as [insert ordinance name] and hereinafter referred to as “this ordinance.”

2. Statutory Authority

- a. This ordinance is authorized by Wisconsin Statutes §§59.51 Board Powers, 59.692 Zoning of Shorelands on Navigable Waters, 59.694 County Zoning, Adjustment Board, and Chapter 295 Subchapter I Nonmetallic Mining Reclamation, and Wisconsin Administrative Code Chapter NR 135 Nonmetallic Mining Reclamation.

3. Effective Date

- a. This ordinance shall be effective on [insert date].

B. PURPOSE AND OBJECTIVES

1. Nonmetallic mining is recognized as an important industry that contributes to the [Local Unit of Government’s] economic well-being. However, there is a substantial likelihood of short-term and long-term damage to the physical environment and tax base from nonmetallic mining if it is not regulated. This ordinance establishes regulations for nonmetallic mining to minimize or prevent damage to the public and the environment and to restore mining sites to a useful and stable condition after mining ceases.

C. APPLICABILITY

1. This ordinance is applicable to any nonmetallic mining site within [Local Unit of Government] that commenced nonmetallic mining operations after [date]. Where this ordinance imposes a greater restriction upon the land than is imposed or required by existing provisions of law, ordinance, contract or deed, the provisions of this ordinance shall control. In the event of conflicting provisions in the text of this ordinance or any other municipal ordinance, the most restrictive shall apply.

D. SEVERABILITY

1. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

E. RESTRICTIONS ADOPTED UNDER OTHER AUTHORITY

1. The purpose of this ordinance is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation¹ and to implement operating standards for nonmetallic mining.

F. INTERPRETATION

¹ Wisc. Stat. § 295.12(1)(a), as amended, and contained in Wisc. Admin. Code NR 135.

- 1. Interpretation.** This ordinance contains the applicable requirements for nonmetallic mining and reclamation and shall not limit or repeal any other power granted by Wisconsin statutes outside the reclamation requirements for nonmetallic mining sites required by Wisconsin Statutes and regulations.² Where any terms or requirements of this ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by the Wisconsin Statutes or Regulations, the provision shall be interpreted to be consistent with the Wisconsin Statutes and Regulations. Any further amendments, revisions or modifications of the statutes or administrative rules incorporated herein are intended to be made part of this chapter in order to secure uniform statewide standards for reclamation of nonmetallic mining sites.
- 2. Liberal Construction.** The provisions of this ordinance shall be liberally construed in favor of [Local Unit of Government].

G. LIMITATION OF ACTION CHALLENGING VALIDITY OF ORDINANCE

- 1. Claims.** A land owner, occupant or other person affected by this ordinance or amendment thereto who claims that this ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance were not followed shall commence a court action within six months after adoption of this ordinance or forever be barred.³

H. EXEMPT ACTIVITIES

- 1.** Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources for the enlargement and protection of waterways, changing of stream courses, or the removal of material from beds of navigable waters.⁴
- 2.** Excavations in a harbor to make harbor improvements.⁵
- 3.** Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- 4.** Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- 5.** Grading conducted by preparing a construction site or restoring land following a flood or natural disaster.
- 6.** Excavations for building construction purposes conducted on the building site.
- 7.** Any metallic mining operation.⁶

² Wisc. Stat. Subchapter I of Chapter 295, as amended; Wisc. Admin. Code NR 135.

³ See Wisc. Stat. § 59.69(14).

⁴ See Wisc. Stat. §§ 30.19, 30.195, or 30.20 and Wisc. Admin. Code NR 340.

⁵ Subject to the permit and reclamation requirements of Wisc. Stat § 30.30 or § 30.31.

8. Any activities required to prepare, operate or close a solid waste disposal facility,⁷ or a hazardous waste disposal facility⁸ that are conducted on the property where the facility is located.
9. Mining Projects Overseen by the Department of Transportation.
 - a. 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, subject to the restoration or reclamation requirements of the Wisconsin Department of Transportation will not be subject to the reclamation standards of the [Local Unit of Government]. Such mining, however, will be subject to the operational standards of this ordinance and will be required to obtain a Nonmetallic Mining Operational Permit, at the discretion of the [Local Unit of Government].
 - b. 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 state 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.
 - c. If a nonmetallic mining site covered under H(9) (a) and (b) is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this subsection still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
10. Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

I. DEFINITIONS

1. Definitions for the purposes of this ordinance are those contained in Wisconsin Administrative Code NR 135.03, including but not limited to:
 - a. “Applicable reclamation ordinance” means a nonmetallic mining reclamation ordinance that applies to a particular nonmetallic mining site and complies with the requirements of NR 135 and Wisconsin Statute Subchapter 1 of Chapter 295.
 - b. “Financial assurance” means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements of

⁶ Metallic mines are regulated under Wisc. Stat. Chapter 293.

⁷ Governed under Wisc. Stat. Chapter 289.

⁸ Governed under Wisc. Stat. Chapter 291.

this ordinance and is sufficient to pay for reclamation activities required by this ordinance and Wisconsin Administrative Code NR 135.

- c. “Highwall” means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.
- d. “Municipality” means any city, town, or village.
- e. “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.
- f. “Nonmetallic mining” or “mining” means all of the following.
 - 1) 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.
 - 2) 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.
- g. “Nonmetallic mining reclamation” or “reclamation” means the rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved nonmetallic mining reclamation plan, 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.

- h. “Nonmetallic mining site” or “site” means all contiguous areas of present or proposed mining, including:
 - 1) The location where nonmetallic mining is proposed or conducted;
 - 2) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining;
 - 3) Areas where nonmetallic mining refuse is deposited;
 - 4) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining;
 - 5) Areas where grading or regrading is necessary; and
 - 6) 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
- i. “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.
- j. “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency, or federal agency
- k. “Registered professional engineer” means a person who is registered as a professional engineer pursuant to Wisc. Stat. § 443.04
- l. “Regulatory authority” means the local unit of government in which the nonmetallic mining site is located, that has an applicable reclamation ordinance under Wisc. Stat. § 295.13.
- m. “Replacement of topsoil” means the replacement or redistribution of topsoil or topsoil substitute to all areas where topsoil was actually removed or affected by nonmetallic mining for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use as required by the reclamation plan approved pursuant to an applicable reclamation ordinance
- n. “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 Wisc. Stat. Ch. 283, or source material, special nuclear material or by-product material, as defined in Wisc. Stat. § 254.31 (1).
- o. "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.
 - p. "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.
2. When not defined in this ordinance or Wisconsin Administrative Code § NR 135.03, all other definitions shall be found in the Geological Society Engineering Geology Special Publication No 9, titled Aggregates or, if not there, in a standard dictionary.

II. Nonmetallic Mining Reclamation Permit and Nonmetallic Mining Operational Permit.

A. PERMIT CONDITIONS

- 1. Permits Required.** Mining is not a permitted use anywhere in [Local Unit of Government]. In zoning districts where nonmetallic mining is a conditional use, the following permits are required:
- a. Nonmetallic Mining Reclamation Permit ("Reclamation Permit") which regulates mining reclamation standards according to the requirements of this ordinance and Wisconsin State Statutes and Regulations; and
 - b. Nonmetallic Mining Operational Permit ("Operational Permit"), which regulates the operation of a mine according to the requirements of this ordinance.
 - c. No person may commence nonmetallic mining or nonmetallic mining reclamation in [Local Unit of Government] without first obtaining a Nonmetallic Mining Reclamation Permit and a Nonmetallic Mining Operational Permit issued pursuant to this ordinance. The permits must be maintained for the duration of the operations.

2. Permit Duration

- a. A Reclamation Permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked.⁹
- b. An Operational Permit issued under this chapter is valid for five (5) years from when it is issued. If the operator seeks to continue mining, the operator must apply for a new Operational Permit.

3. Permit Modification

- a. If [Local Unit of Government] finds that, because of changing conditions or environmental concerns, the nonmetallic mining site is no longer in compliance with this ordinance or the applicable state reclamation standards, it may, at its complete discretion, issue an order modifying either permit so that the nonmetallic mining site will be in compliance.¹⁰

4. Permit Denial

- a. An application to issue a Reclamation Permit or Operational Permit shall be denied no sooner than thirty (30) days and no later than ninety (90) days following receipt of a complete operational permit application and reclamation permit application,¹¹ if the [Local Unit of Government] finds any of the following:
 - 1) After having been given an opportunity to make corrections, the applicant has failed to provide a complete, satisfactory or adequate permit application, operational plan, reclamation plan, financial assurance or any other submittal required by this ordinance or the applicable state statutes and regulations to the regulatory authority;
 - 2) The proposed nonmetallic mining site likely cannot be operated in compliance with the operational standards contained within this ordinance or the [Local Unit of Government] Comprehensive Plan; or
 - 3) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this ordinance, Wisconsin Administrative Code Chapter NR 135, or Wisconsin Statute Chapter 295, Subchapter 1.
 - 4) Patterns of serious violations.
 - i. The applicant, or its agent, principal or predecessor, has, within ten (10) years of filing an application for a

⁹ See Wisc. Admin. Code NR 135.27.

¹⁰ See Wisc. Admin. Code NR 135.43.

¹¹ See Wisc. Admin. Code NR 135.21(1).

nonmetallic mining permit, shown a serious violation or pattern of serious violations of this or a predecessor ordinance or of federal, state, or local environmental laws, rules, regulations or ordinances related to nonmetallic mining.

- ii. Serious violations include, but are not limited to:
 - 1. Rulings or adjudications against an operator or the operator's agent, principal or predecessor in administrative or judicial proceedings;
 - 2. Suspensions or revocations of nonmetallic mining permits pursuant to this or a predecessor ordinance, other ordinances, or Wisconsin Administrative Code Chapter NR 135; or
 - 3. Forfeitures of financial assurances.
- iii. A denial under this subsection shall be in writing and shall contain reasons for denial.
- b. A decision to deny an application to issue a reclamation permit may be reviewed by a state court in accordance with state law.¹²

5. Permit Revocation

- a. Grounds. [Local Unit of Government] may suspend or revoke an Operational or Reclamation Permit issued pursuant to this ordinance if it finds that the operator has done any of the following:
 - 1) Failed to submit or maintain financial assurance as required by this ordinance;
 - 2) Failed to submit annual fees;
 - 3) Failed on a repetitive and significant basis to follow the approved operational or reclamation plan;
 - 4) Failed to submit required reports to answers to inquiries by the [Local Unit of Government]; or
 - 5) Failed to comply with this ordinance in any respect.
- b. Suspension. If [Local Unit of Government] makes any of the findings in subsection (a), it may suspend a nonmetallic mining reclamation permit for up to ninety (90) 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 [Local Unit of Government].¹³
- c. Revocation. If [Local Unit of Government] makes any of the findings in subsection (a), it may revoke the Reclamation or Operational

¹² See Wisc. Admin. Code NR 135.30.

¹³ See Wisc. Admin. Code NR 135.43.

Permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided.¹⁴

6. Reclamation Permit Termination

- a. A Reclamation Permit shall terminate when all final reclamation required by the reclamation plan is completed and certified as complete pursuant to the standards set forth in this ordinance and State Statutes and Regulations.

7. Permit Transfer

- a. An Operating Permit or Reclamation Permit may be transferred to a different operator if the new operator provides financial assurance and receives approval from the [Local Unit of Government]. The transfer is not valid until the new operator submits financial assurance and the [Local Unit of Government] makes a written finding that the operator [and/or other relevant parties] will comply with all conditions of the permit.
- b. The existing financial assurance shall remain in effect until the [Local Unit of Government] approves the new operator's financial assurance.

B. NONMETALLIC MINING RECLAMATION AND OPERATIONAL PERMIT APPLICATION REQUIREMENTS

1. General Application. An operator shall submit an application for both the Operational and Reclamation Permit¹⁵ which shall include:

- a. The name, address, telephone number, and e-mail address of all persons or entities who are owners or lessors of the property on which the nonmetallic mining site is located;
- b. The name, address, telephone number, and e-mail address of any operator of the nonmetallic mining operation;
- c. The legal description and parcel identification number of the property on which the nonmetallic mining site is located;
- d. A copy of a fully executed lease between the operator and the owner of the property on which the nonmetallic mining site is located and/or an agreement between the operator and owner to conduct a nonmetallic mining operation on the owner's property;
- e. A narrative describing the material to be excavated, amount of material to be removed per year and in total through the life of the mine, plans for blasting description of on-site processing, vehicle and equipment usage, proposed hours and days of operation, expected life

¹⁴ See Wisc. Admin. Code NR 135.40.

¹⁵ The permit application for the Reclamation Permit only needs to include the requirements listed in Wisc. Admin. Code NR 135.18–19.

- of the mine and any other pertinent information requested by the [Local Unit of Government];
- f. An aerial photo at a scale of one inch = 660 feet, showing the name of the operator and boundaries of the nonmetallic mining site. The photo should include the scale;
 - g. A map or maps drawn to a scale of not less than one inch = 200 feet that cites permanent reference points, includes the scale, and shows:
 - 1) The name of the operator;
 - 2) The town within which the nonmetallic mining site is located;
 - 3) Nearby platted zones, subdivisions, and other uses within one (1) mile of the property;
 - 4) The boundaries of the nonmetallic mining site and total acres of the nonmetallic mining site;
 - 5) Map of affected Natural Resources with a description of the biological resources, plant communities, and wildlife use on and adjacent to the nonmetallic mining site;
 - 6) The location and name (if named) of all lakes, ponds, flowages, rivers, streams, wetlands, drainage patterns, and other water features in and within 1200 feet of the nonmetallic mining site boundaries;
 - 7) The location of all private and municipal wells within one (1) mile of the nonmetallic mining site boundaries;
 - 8) The components of the operation, including: buildings other structures, equipment, wash plants, stockpiles, storage areas, sediment basins, dikes and parking areas. For existing nonmetallic mining sites, show the boundaries of previous excavations;
 - 9) Location of screening shown to scale, and notes provided indicating when they will be used as reclamation material;
 - 10) Exterior lighting plan, identifying the location, size, type and height of all luminaires;
 - 11) The location and identify of all man-made features on or adjacent to the site within 1200 feet of the site boundaries;
 - 12) Sequences or phases of operation, including a description of each, showing approximate areas involved, shown to scale and serially numbered;
 - 13) The final condition of the reclaimed mine site, including topographical contours, drainage patterns, vegetation plans, and any other information requested by the [Local Unit of Government]; and

- 14) Any other maps requested by the [Local Unit of Government].
- h. A topographic map of the nonmetallic mining site and 200 feet beyond the site boundaries at contour intervals no wider than two (2) feet;
 - i. One (1) cross-section of the area for every one thousand (1000) feet running north/south and east/west with a minimum of three (3) cross-sections showing:
 - 1) The extent of the overburden, include the distribution, thickness and type of topsoil on the site;
 - 2) Extent of mineral deposits, including a description of their geological composition;
 - 3) The ground water level, any evidence of groundwater level in the past, including groundwater flow directions and velocities;
 - 4) Identification of all karst features such as sink holes, stream sinks, springs, caves, joints, or fractures within one-half mile of the mining site;
 - 5) The planned depth of excavation; and
 - 6) Additional cross sections may be required at the discretion of the [Local Unit of Government].
 - j. A description of existing environmental contamination, including groundwater contamination, at the mine site and within two (2) miles of the site;
 - k. A description of how and where chemicals will be used on site whether for the manufacturing or processing operations along with a description of the measures that will be used to secure, store, and remediate these materials in the event of a spill or accidental discharge;
 - l. An operation plan conforming to the requirements of this ordinance including:
 - 1) A road maintenance agreement with [Local Unit of Government] and any other Local Units of Government,¹⁶ which must include:
 - i. A roundtrip hauling route for the shipping of nonmetallic minerals from the excavation or mining site to a targeted delivery location, including the estimated number of tons to be hauled per truck and estimated number of tons hauled per month; and
 - ii. Mining Operator's agreement to pay a road pavement impact fee, as decided by the [Local Unit of Government] for the projected costs of repairing and

¹⁶ For example, a township, if this is a county ordinance.

replacing road pavement damaged by the hauling of nonmetallic minerals from an excavation site. The fee established at the time of the application will be reviewed every two years.

- 2) Plan for dust control;
 - 3) Plan for noise control;
 - 4) The source, quantity and disposition of water to be used;
 - 5) A surface water protection plan to address on-going monitoring, accident response and remediation;
 - 6) A groundwater protection plan to address on-going monitoring, accident response and remediation. At least one groundwater monitoring well must be installed near the mine site and a location approved by the [Local Unit of Government];
 - 7) Contingency Response Plan to facilitate immediate and remedial response should any accident, release of any contaminants into soil or water, or other spills occur. The Contingency Response Plan must be on file with the [Local Unit of Government]. The operator shall facilitate employee training on the Contingency Response Plan;
 - 8) Estimated dates for completion of extraction;
 - 9) Estimated dates for commencement and completion of reclamation;
 - 10) Hours of operation; and
 - 11) Description of blasting procedures, the operator must indicate frequency, timing size and duration of blasting.
- m. A reclamation plan conforming to the requirements of Wisconsin State Statutes and Regulations and this ordinance;
 - n. A public engagement plan to educate local citizens about the mine operation and efforts taken to protect public health and welfare and the environment; and
 - o. Additional relevant information deemed necessary by the [Local Unit of Government] to protect public health and welfare.

2. Excavation Below Groundwater Table. For sites with planned excavation lower than the groundwater table, the operator shall submit a detailed hydrogeologic report. [Local Unit of Government] shall require the operator to reimburse the [Local Unit of Government] for the expense of professional work or opinions in review of a hydrogeologic report. The hydrogeologic report shall provide the following information, as well as a description and justification of all hydrologic methods used:

- a. Existing conditions to establish baseline data, including but not limited to:
 - 1) Analysis of groundwater quality on the mining site consistent with Wisconsin Statutes and Regulations;¹⁷ and
 - 2) Identification of all existing groundwater users (neighboring private water-supply wells, well head protection areas, municipal wells, irrigation wells, etc.) within 1200 feet of the mining site.¹⁸ Well construction reports including well location, well depth, depth of casing, depth to water, and aquifers penetrated shall be identified.
- b. Proposed operational data, including but not limited to:
 - 1) Elevation of the lowest point of mining and dewatering activities below groundwater;
 - 2) Description of the means planned to prevent surface water running into the excavation;
 - 3) Where dewatering is proposed, provide pumping rates and times; elevation of the groundwater draw down level; and identification of groundwater discharge locations and quantities; and
 - 4) A groundwater monitoring program to ensure compliance with the provisions of this section. Such program shall include the installation of monitoring wells near the site perimeter of the proposed area of excavation to measure groundwater elevations, quality, flow directions, and velocities.
- c. If groundwater modeling is required, the following minimum information shall be provided:
 - 1) Description and justification of all input data to groundwater models;
 - 2) Calibration of all groundwater models;
 - 3) Sensitivity analysis for all groundwater models;
 - 4) Detailed output from the hydrologic methods including the elevation of the water, elevation of the cone of depression caused by dewatering, groundwater flow directions, groundwater velocities, mounding elevations, and any potential effects on nearby surface water, springs, or users of surface and groundwater; and

¹⁷ Wisc. Admin. Code NR 140.20.

¹⁸ See Wisc. Admin. Code NR 812.

- 5) Description of the possible existence of fractures, solution cavities or other karst features in the geologic material and their effect on groundwater flow and land stability.

3. State and Federal Permits. As a condition of any permit issued pursuant to this ordinance, no mining will be allowed until evidence is shown the operator has obtained all necessary State and Federal permits.

4. Application Fee

- a. The operator shall pay an application fee at the time it submits the permit.¹⁹
- b. The amount of the application fee shall be established by [Local Unit of Government] with the approval of the [Local Unit of Government]. The amount of the fee may be modified from time to time to reflect current costs.²⁰

C. NOTICE AND HEARING

1. Within thirty (30) days of receipt of a complete application for a nonmetallic mining permit, the [Local Unit of Government] shall publish a class 2 notice in the official [Local Unit of Government] newspaper²¹ and:

- a. Within sixty (60) days of receipt of a complete application for a nonmetallic mining permit, the [Local Unit of Government] shall hold two public hearings. The first public hearing will be to gather information and public testimony on the reclamation plan. The second public hearing will be to gather information and public testimony on the operational plan.

2. A copy of the public notice shall be forwarded to:

- a. The [Planning and Zoning Committee, Land Use Committee or similar regulatory authority];
- b. The Land and Water Conservation Department [or similar regulatory authority];
- c. All municipalities within which the nonmetallic mining is located²²;
- d. Owners of land within three hundred (300) feet of the nonmetallic mining site; and
- e. The Wisconsin Department of Natural Resources.

D. DECISION ON APPLICATION

1. A decision on an application for an Operating and Reclamation Permit issued by the [Local Unit of Government] shall be made within thirty (30) days of

¹⁹ The fee shall cover the cost of processing and reviewing the application, publishing public notices, conducting public hearings, and inspecting nonmetallic mining sites prior to permitting.

²⁰ The operator shall pay a fee when requesting to modify an existing permit. The fee shall be for the same purposes and in the same manner as stated in paragraph a. of this section.

²¹ See Wisc. Stat. § 985.07(2).

²² If the Local Unit of Government is a County.

the public hearing or within thirty (30) days of the last day for requesting a public hearing. The decision shall be in writing. If the decision is a denial, the reasons for denial shall be stated.

2. The committee shall consider the effect of the proposed operation upon existing streets, traffic, neighboring development, proposed land use, drainage, water supply, soil erosion, natural beauty, character, and land value of the locality, health, welfare, and safety of residents and the practicality of the proposed reclamation of the site.

III. Annual Report

A. OPERATOR ANNUAL REPORT

1. Submission.

- a. Every operator shall submit an annual report for each nonmetallic mining site to the [Local Unit of Government]. The annual report shall include the following:
 - 1) The name and mailing address of the operator;
 - 2) The location of the nonmetallic mining site, including legal description and tax key number or parcel identification number if assigned;
 - 3) The nonmetallic mining permit number if assigned;
 - 4) The number of unreclaimed acres;
 - 5) The number of acres permanently reclaimed;
 - 6) The number of acres reclaimed on an interim basis;
 - 7) A map or drawing accurately showing the acreage described under paragraphs (4)-(6);
 - 8) If mining into groundwater, actual pumping rates and times, actual groundwater discharge locations and quantities, and groundwater monitoring results;
 - 9) A statement providing all instances of non-compliance notification, violation or other regulatory enforcement. The statement shall include an explanation of the steps taken to alleviate the instance of non-compliance, violation, or enforcement problem; and
 - 10) The following certification, signature of the operator, and date of signature:

I certify that the information contained in this annual report is true and correct to the best of my knowledge and that the nonmetallic mining site complies with the nonmetallic mining permit, this ordinance, and Wis. Adm. Code Ch. NR 135.

- b. The annual report shall cover all mining and reclamation activities for the previous calendar year and shall be submitted by January 31, [20xx].
- c. Annual reports shall be submitted for all active nonmetallic mining sites and intermittent nonmetallic mining sites. Annual reports shall be submitted until final reclamation of the site is certified as complete by the [Local Unit of Government].
- d. The [Local Unit of Government] may obtain the information required for an annual report through an inspection and written report of the nonmetallic mining site in lieu of the annual report. If the [Local Unit of Government] substitutes an inspection report for the annual report, he/she shall notify the operator in writing at least thirty (30) days prior to the end of the year that an annual report need not be submitted for that year. The operator shall still submit the certification required in paragraph (1)(a)(10) of this section.
- e. If the operator fails to submit an annual report, the operators' operational permit will be suspended or revoked.
- f. The [Local Unit of Government] shall retain an annual report, or substitute annual report, for ten years.

IV. Operating Standards

A. GENERAL INFORMATION

1. Nonmetallic mining shall be conducted in accordance with a written operation plan. An operation plan shall be submitted with the application for a nonmetallic mining permit.
2. The following operating conditions and standards must be met by all mining operations. The [Local Unit of Government] reserves the right to change these conditions in any Conditional Use Permit based on the land conditions, such as slope, soil type, runoff, the presence of endangered or threatened species, or other particularly sensitive natural areas such as bluffs, wetlands, and trout streams.

B. OPERATING CONDITIONS.

1. **Hours of Operation.** Those portions of the mining operation consisting of excavating, stockpiling, processing, or hauling shall be conducted only between 8:00 a.m. and 6:00 p.m. Monday through Friday. Mining operations shall not take place on legal holidays. Blasting is only permitted when approved and with three days' notice to the [Local Unit of Government].
2. **Noise.** During all operations, from commencement through completion of reclamation, all noise and vibrations shall conform to the requirements of all Federal, State, and municipal standards. The operator shall prepare a noise mitigation plan.

- 3. Dust.** The operator must construct, maintain, and operate all equipment in such a manner as to minimize on-site and off-site dust conditions. All operations shall meet the standards of NR 415 Control of Particulate Emissions.
- a. Access Roads. The operator shall maintain all ways and roads within the site to minimize dust conditions by providing such surfacing or other treatment as may be deemed necessary by the [Local Unit of Government]. The treatment shall produce no potential pollution hazards to the ground and surface waters of the area. All gravel pit access roads shall be provided and maintained with a dustless, non-oiled surface not less than twenty-two (22) feet wide from the connection to a public road to a point within one hundred (100) feet of the loading area. The [Local Unit of Government] may require a blacktopped access road if deemed necessary.
 - b. Public Roads. Access roads shall also be constructed and maintained in such a manner that the deposit of earth materials on public roads is minimized. In the event that earth materials are deposited on the public road, the mine operator shall be responsible for clean-up. If the mining operation does not access onto a paved road, the operator shall be responsible for dust control.
- 4. Screening.** Where deemed necessary by the [Local Unit of Government], the operator shall screen or locate extracting and processing operations in such a manner as to minimize the impacts on surrounding properties. To minimize noise, dust, odors, erosion and visual impacts on surrounding properties, the operator shall install and maintain a screen, either along the street or along the perimeter of the visible portion of the area being operated.
- a. The screen shall have a total height of at least six feet and shall consist of one or more of the following types:
 - 1) Walls. A wall shall consist of concrete, stone, brick, tile, or similar type of solid masonry material that is at least four inches thick.
 - 2) Berms. A berm must be constructed with earthen materials and must be seeded and mulched. Berms must not create negative impacts on surface water on neighboring properties. If berms are constructed of topsoil, they must remain until final reclamation. Berms must have a minimum slope of 3:1 and have a silt fence at the base closest to the public road or neighboring property. The silt fence shall be maintained until vegetation is established, at which time it shall be removed.

No haul roads (temporary or permanent), material stockpiles, or other mining-related activities shall occur on the berm.

- 3) Fences, solid. A solid fence shall be constructed of wood and shall form a continuous screen.
- 4) Fences, open. An open weave or mesh-type fence, when not used in combination with a berm, shall be combined with plant materials to form a continuous screen.
- 5) Planting. Plant materials, when used as a screen, shall consist of dense native plants or a majority of dense native plants combined with deciduous plants provided that a continuous screen is established. They shall be of a kind or used in such a manner so as to provide a continuous screen within 24 months after commencement of operations in the area to be screened. Plant materials shall not be limited to a maximum height.
- 6) The screening plan required in the application materials shall be prepared by a licensed landscape architect at the request of the [Local Unit of Government]. The operator shall install screening prior to commencement of operations. The [Local Unit of Government] may require that either (i), (ii), or (iii) above shall be installed if, 24 months after commencement of operations in the area to be screened, plant materials have not formed an opaque screen, or if an opaque screen is not maintained.

5. Fencing. Where deemed necessary by the [Local Unit of Government] for the protection of the general public, the operator [or other relevant party] shall construct a fence prior to the commencement of the operation enclosing the area authorized to be mined by the permit. Where fencing is required by the [Local Unit of Government] within which the nonmetallic mine is located, said fence shall be, at a minimum, a three strand wire fence and the fence shall be posted with warning signs.

6. Setbacks. No person shall establish, construct, operate or maintain the use of property for any mining related buildings, roads, ponds, or other construction within the following areas:

- a. Within 1,000 feet of any navigable or non-navigable lake, pond or flowage;
- b. Within 1,000 feet of any navigable or non-navigable waterbody or wetland;
- c. Within 100 feet of adjoining property lines;

- d. Within 100 feet from the base of a bluff, which means the line delineating the bottom of a slope connecting the points at which the slope becomes 18 percent or greater;
- e. Within 1,000 feet of any existing occupied structures not owned by the operator or owner;
- f. Within 500 feet of any contiguous property subdivided into residential lots;
- g. Within a floodplain; or
- h. Within 1,000 feet of the nearest edge of the right-of-way of any of the following: any state trunk highway, interstate or federal primary highway; the boundary of a state public park; the boundary of a scenic easement purchased by the department of transportation; the boundary of a designated scenic or wild river; a scenic overlook designated by the department by rule; or a bike or hiking trail designated by the United States Congress or state legislature.

7. Lighting.

- a. All lighting equipment shall be designed so that the light source is completely shielded from the direct view of an observer standing on a point five feet above the grade on the lot line.
- b. The use of exterior lighting must observe the same hours of operation as the use itself, except that a minimum level of lighting for security and safety purposes may be left on beyond the normal hours.

8. Site Clearance. All stumps and other debris resulting from the excavation or related activities should be disposed of by approved methods.

9. Appearance/Condition. The operator must maintain buildings and in a neat condition. Weeds and other unsightly or noxious vegetation shall be controlled as necessary to preserve the appearance of the landscaped area. Existing trees and topsoil along existing public rights-of-way shall be preserved, maintained and supplemented for the depth of the setback or as stipulated in the conditional use permit.

10. Sewer. The operator shall provide adequate drainage to sanitary sewer or storm sewer, including lift stations, if necessary. The storm sewer shall be built to handle a 100-year rainstorm.

11. Waste Disposal. Any waste generated from the mining operation, including waste from vehicle or equipment maintenance, shall be disposed of in accordance with Federal, State, County, and [Local Unit of Government] requirements

12. Water Quality Monitoring. Water quality monitoring when required shall conform to the following requirements:

- a. All mining operations must install one (1) groundwater monitoring well at a location to be approved by the [Local Unit of Government]. If the proposed mining operation will appropriate groundwater for use in mining operations, the operator shall install not less than one (1) monitoring well down-gradient of the mining operation;
- b. Water from monitoring wells, water collected or discharged from the mining site, and rivers or streams within three thousand (3,000) feet of the mine site shall be analyzed until one year after reclamation is completed;
- c. Prior to the commencement of mining, samples shall be taken from the monitoring wells and applicable rivers or streams. These samples will record the state of the ground and surface water prior to mining;
- d. Samples from monitoring wells, discharge and streams shall be taken and testing results submitted in the annual report. Sampling and testing shall be done by an independent testing laboratory or an agency chosen by the [Local Unit of Government]. Water samples shall be analyzed to determine the level of petroleum products, flocculants, and other contaminants as specified by the [Local Unit of Government];
- e. Stream monitoring will also analyze the temperature and clarity of the water. The downstream water results will be compared to the upstream water results and the state of the stream prior to mining; and
- f. More frequent monitoring may be required by the [Local Unit of Government].

13. Water Quality Protection

- a. Water management shall follow the plan submitted by the mine operator in the Conditional Use Permit application.
- b. The Operator shall conduct and complete nonmetallic mining and reclamation in a manner that assures compliance with water quality standards for surface waters and wetlands contained in Wisconsin Administrative Code Chapters NR 102 to 105, as well as groundwater quality standards in Wisconsin Administrative Code Chapter NR 140.
- c. Before disturbing the surface of a nonmetallic mining site and removing topsoil, operators [and/or other relevant parties] shall install all necessary measures for diverting and draining runoff from the site to prevent pollution of waters of the state in accordance with the reclamation plans approved pursuant to this ordinance. Diverted or channeled runoff resulting from reclamation may not adversely affect neighboring properties. If water quality is degraded or impaired or if contaminants traceable to the mine are found in water samples, the

mine must terminate mining activities and the mine's conditional use permit may be revoked.

- 14. Protection of Water Tables.** The maximum depth of excavation shall be established so that groundwater quality is protected. No mining may proceed within twenty-five (25) feet of the water table.
- a. The depth of excavation shall be established by the [Local Unit of Government] and will be based, in part, upon soil characteristics, depth to water table, nature of mining proposed, and the impact on local uses of the aquifer.
 - b. Mining shall not occur in confined aquifers. If allowed by the permit, excavation into unconfined aquifers must be closely monitored and conducted according to the conditions of the permit.
 - c. No extraction operations shall be conducted in such a manner as to permanently lower the water table of surrounding inhabited properties or any other water body.
 - d. Water levels and quality in surrounding wells shall be guaranteed by the owner of the mine.
- 15. Fuel Storage.** All on-site storage of fuel must meet Federal, State and local standards.
- 16. Minimum Disturbance.** Existing trees and groundcover outside of mineral extraction areas shall be preserved to the maximum extent possible.
- 17. Stockpiles.** Stockpiles must be located on even ground away from natural drainage areas. Sediment barriers must be used should be used to prevent erosion. Stock piles which will not be added to or subtracted from for thirty (30) days should be vegetated.
- a. Topsoil. The following requirements must be followed with regard to topsoil:
 - 1) Topsoil, subsoil and overburden must be stripped and stored separately;
 - 2) Topsoil must not be used to create barriers and berms;
 - 3) Stockpiles of topsoil must be no more than twenty-five (25) feet high;
 - 4) Aggregate and overburden must not be piled on top of topsoil;
 - 5) Topsoil must not be driven on by equipment or trucks; and
 - 6) Topsoil must not be sold or removed from the property.
- 18. Settling Ponds.**
- a. Settling ponds shall be located in a geologically stable area, close to the wash plant or where water will naturally collect, so long as the settling pond is not located in a stream bed or in a wetland.
 - b. Ponds must be kept out of active floodplains.

- c. Settling ponds shall be built in a manner to prevent leaking and lined with compacted earth or clay.
 - d. All settling ponds must have the retention capacity of at least 110% of the volume of water used by the mine and have at least two feet of free board during normal operation of the pond.
 - e. The bottom of all settling ponds shall be at least five (5) feet above the highest anticipated groundwater table or seasonal perched groundwater.
 - f. The sidewall berm must be built out of compacted earth at least ten (10) feet wide at the base with a maximum slope of 2:1. The sidewall must be vegetated.
 - g. An emergency outlet spillway should be built and riprapped with a coarse material to prevent berm washout.
 - h. All settling ponds must have a maintenance and inspection plan approved by the [Local Unit of Government].
 - i. All flocculants or chemical treatments of the water in the settling pond must be disclosed to the [Local Unit of Government].
 - j. A plan for settling pond sediments must be approved by the [Local Unit of Government]. Sediments must not be disposed of in a manner which would adversely affect wetlands or ground or surface water.
- 19. Blasting.** Blasting is only permitted when approved in the Operational Permit and with three days' notice to the [Local Unit of Government].
- 20. Additional Provisions.** The operator must comply with such other requirements that the [Local Unit of Government], from time to time, may find necessary to adopt for protection of the health, safety, welfare and prevention of nuisance in the area.
- 21. Processing.** Any mining operation in which processing is proposed shall meet the following performance standards:
- a. A Conditional Use Permit is required for any new or existing mining operation which desires to add processing equipment on-site;
 - b. The application must include a description of the processing equipment, location of the plant, source of water, disposal of water, and reuse of water;
 - c. Operators desiring to have permanent processing equipment (more than fifteen (15) days per year) on site must meet the following requirements:
 - 1) Compliance with all Federal, State and local air, water, and noise quality standards;
 - 2) Mining operations established after the effective date of this ordinance must encompass at least forty (40) acres of land area under permit;

- 3) Processing equipment must be screened from view from property lines and the road;
 - 4) Machinery must be buffered and all noise standards of the State and [Local Unit of Government] must be met;
 - 5) Crushing equipment must be placed in the bottom of the pit if practical, otherwise located in such a manner as to have the least environmental and aesthetic impact; and
 - 6) Compliance with setback requirements as set forth in this ordinance.
- d. Operators who wish to have processing equipment on a temporary basis (processing to be done no more than fifteen (15) working days a calendar year, excluding time for assembly and disassembly) shall meet the following requirements:
- 1) Only materials removed on site are allowed to be processed. No materials may be hauled onto the property for processing, unless all material can be processed during the fifteen (15) day time period;
 - 2) Setbacks as outlined in Section V.B.6 must be met;
 - 3) All Federal, State and local air, water and noise standards must be met;
 - 4) Operator must notify the [Local Unit of Government] and the local township one (1) week in advance of processing;
 - 5) Processing shall not take place more than fifteen (15) working days per year; and
 - 6) Crushing equipment must be placed in the bottom of the pit area if practical, otherwise located in such a manner as to have the least environmental and aesthetic impact.
- e. A temporary processing plant in conjunction with a specific road project, located in the right-of-way or very close proximity to the road project, may be allowed subject to the following requirements:
- 1) All Federal, State and local air, water and noise quality standards are met;
 - 2) A Conditional Use Permit is obtained from the [Local Unit of Government];
 - 3) The processing equipment is located so as to minimize the effect on surrounding property owners;
 - 4) Site selection does not have a negative effect on the public health, safety and welfare;
 - 5) The [Local Unit of Government] approved the request;
 - 6) The processing plant is not on the property for more than 120 calendar days;

- 7) No materials, outside of the designated right-of-way, are excavated or removed from the site without a conditional use permit for mining; and
 - 8) A bond, in an amount determined by the [Local Unit of Government], is posted to assure restoration of the site.
- 22. Recycling.** The crushing/processing of used aggregate, concrete and asphalt will be permitted subject to the following requirements:
- a. Recycling in conjunction with a specific road project and within the right-of-way or in very close proximity to the subject road shall be permitted for a maximum of 120 days subject to the following requirements:
 - 1) A Conditional Use Permit is obtained from the [Local Unit of Government];
 - 2) The processing equipment is located so as to minimize the effect on surrounding property owners;
 - 3) Site selection does not have a negative effect on the public health, safety and welfare;
 - 4) The [Local Unit of Government] approved the request; and
 - 5) All Federal, State and local air, water and noise quality standards are met.
 - b. Recycling in conjunction with an approved mining permit shall be allowed subject to the following requirements:
 - 1) Standards contained in Section IV.B.17 regarding Stockpiles are met.
 - 2) Person seeking to recycle submitted an estimate amount of material to be processed. The pile of material to be recycled shall be limited to the amount that can reasonably be processed in two consecutive mining seasons.
 - 3) The [Local Unit of Government] approved the recycling as part of the mining permit.
 - c. Recycling not in conjunction with a specific road project or with a permitted mining operation shall only be permitted where allowed by the zoning ordinance.

V. Reclamation

A. RECLAMATION PLAN REQUIRED

- 1. Reclamation Plan Required.** All operators who conduct or plan to conduct nonmetallic mining subject to this ordinance shall submit a reclamation plan to [Local Unit of Government] that meets the requirements of this section and complies with the reclamation standards of this ordinance.

B. SITE INFORMATION

- 1. Site Information.** The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, as required by Section II.B.1 of this ordinance, as well as any other information deemed necessary by the [Local Unit of Government].

C. POST-MINING LAND USE

- 1.** The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mining site. The proposed post-mining land use must 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 must also be consistent with all applicable local, state, and federal laws in effect at the time the plan is submitted.
- 2.** Land use for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to Wisconsin Statute Subchapter III of Chapter 91, shall be restored to agricultural use.

D. RECLAMATION MEASURES

- 1.** 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, highwall reduction, benching, terracing and other structural slope stabilization measures and, if necessary, a site-specific engineering analysis performed by a registered professional engineer;
 - b. The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation;
 - c. A plan or map that 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 that shows surface structures, roads, and related facilities after the cessation of mining;
 - e. The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned;
 - f. A revegetation plan that includes timing and methods of seedbed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization;
 - g. Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be

based on the percentage of vegetative cover, productivity, plant density, diversity, or other applicable measures;

- h. A plan and a narrative showing erosion control measures to be employed during reclamation activities. The plan and narrative must address how reclamation activities will be conducted to minimize erosion and pollution of surface water and groundwater; and
 - i. A timetable of reclamation activities.
2. A description of the financial assurance.
 3. A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description must include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land use.
 4. A description of any areas that will be temporarily reclaimed or subsequently mined again for which the operation may request a partial waiver of annual fees and financial assurance.

E. CRITERIA FOR SUCCESSFUL RECLAMATION

1. The reclamation plan shall contain criteria for assuring successful reclamation in accordance with standards contained in the Wisconsin Administrative Code NR 135, including but not limited to NR 135.06 General Standards; NR 135.07 Surface Water and Wetlands Protection, NR 135.08 Groundwater Protection, NR 135.09 Topsoil Management, NR 135.10 Final Grading and Slopes, 135.11 Topsoil redistribution for reclamation, NR 135.12 Revegetation and Site Stabilization, NR 135.14 Intermittent Mining, and NR 135.15 Maintenance.

F. EXISTING PLANS AND APPROVALS

1. To avoid duplication of effort, the reclamation plan required by this section may by reference incorporate existing plans or materials that meet the requirements of this chapter.

VI. Financial Assurance & Insurance

A. FINANCIAL ASSURANCE REQUIRED

1. Prior to commencing any mining activities, the operator shall file a financial assurance with the [Local Unit of Government] which guarantees a specified amount of money available to [Local Unit of Government] for reclamation if the operator fails to reclaim the nonmetallic mining site, in part or in whole.

B. NOTIFICATION

1. [Local Unit of Government] shall provide written notification to the operator of the amount of financial assurance required.

C. FILING

1. Following approval of the nonmetallic reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with [Local Unit of

Government]. The financial assurance shall provide that the operator shall faithfully perform all requirements in this ordinance, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the regulatory authority that has jurisdiction and who issues the approval for the reclamation plan. In cases where the regulatory authority changes from one jurisdiction to another, all financial assurance shall be made payable to the regulatory authority that currently has primary regulatory responsibility in that jurisdiction.

D. AMOUNT AND DURATION OF FINANCIAL ASSURANCE

1. The amount of financial assurance shall equal the cost to [Local Unit of Government] of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by [Local Unit of Government] to assure it equals outstanding reclamation costs. Any financial assurance filed with [Local Unit of Government] shall be in an amount equal to the estimated cost to [Local Unit of Government] for reclaiming all sites the operator has under project permits.
2. 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.
3. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the mine reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.

E. FORM AND MANAGEMENT

1. The operator shall provide financial assurance by a bond or an alternate financial assurance. The [Local Unit of Government] may specify the type of financial assurance the operator must provide.
2. Financial assurance shall be payable to the regulatory authority and released upon successful completion of the reclamation measures specified in the reclamation plan.
3. Alternate financial assurances may include, but are not limited to 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 alternate type of financial assurance is subject to the complete discretion and approval of the [Local Unit of Government].
4. Any interest from the financial assurance shall be paid to the operator.

5. Certificates of deposit shall be renewable automatically or other assurances shall be provided before the maturity date.
6. Financial assurance arrangements may include, at the discretion of [Local Unit of Government], 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.

F. MULTIPLE PROJECTS

1. The operator of two or more nonmetallic mining sites subject to this ordinance may elect to provide a single financial assurance for those sites in lieu of separate financial assurances for each site.

G. MULTIPLE JURISDICTIONS

1. In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the [Local Unit of Government] to avoid requiring the permittee needing to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

H. CERTIFICATION OF COMPLETION AND RELEASE

1. The operator shall notify [Local Unit of Government] by filing a notice of completion at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. [Local Unit of Government] shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. [Local Unit of Government] may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete, the regulatory authority shall issue a certificate of completion and shall release the financial assurance.
2. [Local Unit of Government] shall make a determination of whether or not the certification in paragraph (1) can be made within sixty (60) days that the request is received.
3. A regulatory authority may make a determination under this subsection that:
 - a. Reclamation is not complete;
 - b. It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;
 - c. Reclamation is complete in a part of the mine; or
 - d. Reclamation is fully complete.

I. FORFEITURE

1. Financial assurance shall be forfeited if any of the following occur:
 - a. A permit is revoked; and
 - b. An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

J. CANCELLATION

1. Financial assurance shall provide that the surety or other holder or issuer may not cancel without a minimum ninety (90) day notice to [Local Unit of Government].

K. CHANGING METHODS OF FINANCIAL ASSURANCE

1. 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 this ordinance. The operator shall give the [Local Unit of Government] at least ninety (90) days' notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the regulatory authority.

L. BANKRUPTCY NOTIFICATION

1. The operator of a nonmetallic mining site shall notify [Local Unit of Government] by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 U.S.C., et seq., naming the operator as debtor, within ten days of commencement of the proceeding.

M. ADJUSTMENT OF FINANCIAL ASSURANCE

1. Financial assurance may be adjusted when required by [Local Unit of Government]. [Local Unit of Government] may notify the operator in writing that adjustment is necessary and the reasons for it. [Local Unit of Government] may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.

N. INSURANCE

1. The operator shall provide proof of bodily injury, property damage – including provisions for pollution and contamination cleanup – and public liability insurance in an amount determined adequate by the [Local Unit of Government].

VII. Annual Fees**A. PURPOSE OF ANNUAL FEES**

1. A nonmetallic mining operator shall pay two annual fees to [Local Unit of Government].²³ One annual fee is collected for the Department of Natural Resources; its annual fee shall be equal to the Department's costs to inspect, enforce, consult with and audit the activities of the [Local Unit of government] relating to nonmetallic mining site reclamation and operation.

²³Pursuant to Wisc. Admin. Code NR 135.39.

The second annual fee is retained by the [Local Unit of Government]; its annual fee shall equal the [Local Unit of Government's] expenses to administer the program, including but not limited to the examination and approval of plans, costs to ensure compliance, and inspecting nonmetallic mining sites.

B. AREAS SUBJECT TO FEES.

1. Fees paid under this section shall be calculated based on the unreclaimed acres of a nonmetallic mining site. Unreclaimed acres include unreclaimed areas in which nonmetallic mining has occurred after [date] and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed.²⁴ Unreclaimed areas do not include:
 - a. Those areas where reclamation has been completed and certified as reclaimed under § [insert administration and enforcement section];
 - b. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after [date];
 - c. Those portions of nonmetallic mining sites which are included in an approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining;
 - d. Areas previously mined but used after [date] for a non-mining activity, including stockpiling of materials, provided that the stockpiles are associated with onsite industrial processes, used for an industrial activity unrelated to nonmetallic mining such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining; and
 - e. Those areas within a nonmetallic mining site which have been determined to have been successfully reclaimed on an interim basis by the [Zoning Administrator or other regulatory authority].²⁵

C. AMOUNT OF ANNUAL FEE

1. The Department of Natural Resources' annual fee is shown in Table 1 in Wisconsin Administrative Code § NR 135.39(3) and in a fee schedule published by the [Local Unit of Government]. The annual fees shall be paid no later than January 31 for the upcoming year.
 - a. If reclamation has occurred on a portion of a nonmetallic mining site and the operator has filed a notice of completion, but certification of completion has not been issued by the [Local Unit of Government] at the time the annual fee is due, the payment shall be made and the operator may request that the payment be held by the [Local Unit of

²⁴ Wisc. Admin Code NR 135.03 subp. 25(a).

²⁵ Wisc. Admin. Code NR 135.03 subp. 25(b).

Government] pending certification of completion. Within sixty (60) days of the request, the [Local Unit of Government] shall, in writing:

- 1) Certify completion;
- 2) Make a finding that reclamation is not complete; or
- 3) Make a finding that completion cannot be determined due to weather conditions, snow cover, or other relevant factors, and indication when a determination will be made. If the [Local Unit of Government] certifies completion, or fails to take any of the required actions within sixty (60) days, the portion of the annual fee shall be returned to the operator.

VIII. Administration and Enforcement

A. ADMINISTRATION

1. [Zoning or Land Use] Administrator

- a. The [Local Unit of Government] may designate a person or an organization to administer and enforce this ordinance.

2. Right of Entry and Inspection

- a. The [Local Unit of Government] may inspect any existing or proposed nonmetallic mining site subject to this ordinance for the purpose of ascertaining compliance with the ordinance.
- b. Any authorized officer, agent, employee or representative of the Department of Natural Resources may inspect any existing or proposed nonmetallic mining site subject to this ordinance for the purpose of ascertaining compliance with the reclamation provisions of this ordinance.
- c. No person may refuse an authorized person access to an existing or proposed nonmetallic mining site.

3. Documentation

- a. The [Local Unit of Government] shall, to the best of its ability, maintain the information required below and make available to the Department of Natural Resources' audit of [Local Unit of Government]'s reclamation program:
 - 1) Documentation of operator compliance with Wisconsin Statutes and Regulations and this ordinance;
 - 2) The procedures employed by the regulatory authority] to review reclamation plans and to issue and modify permits;
 - 3) The method of review of operator annual reports;
 - 4) The methods and effectiveness of fee collection;
 - 5) The procedures used to forward the Department of Natural Resources' annual fee in a timely fashion;

- 6) The methods used for conducting on-site compliance inspections, creating attendant reports and records, and taking enforcement actions;
- 7) Responses to citizen complaints;
- 8) The method of determining and the accuracy of the amount of the financial assurance obtained from the operator to guarantee reclamation performance;
- 9) The number and type of approvals for alternate standards issued;
- 10) The methods of maintaining and making available the reclamation records;
- 11) The method of determining the success of a reclamation plan;
- 12) Any changes in local regulations, ordinances, funding, staffing, or any other factor which might affect the ability of the [Local Unit of Government] to administer the nonmetallic mining reclamation program under this ordinance;
- 13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration; and
- 14) Any other performance criteria reasonably deemed necessary by the Wisconsin Department of Natural Resources to ascertain compliance with Wisconsin Statutes and Regulations.

4. County Annual Report Requirements²⁶

- a. The [Local Unit of Government] shall submit an annual program report. The annual program report shall include the following:
 - 1) The total number of active nonmetallic mining permits;
 - 2) The number of new permits issued in the reporting year;
 - 3) The total number of acres being mined;
 - 4) The total number of acres approved for mining;
 - 5) The number of acres approved for mining in the reporting year;
 - 6) The number of acres reclaimed in the reporting year for which financial assurance has been released;
 - 7) The number of acres reported to be reclaimed in the reporting year for which the financial assurance has not yet been released; and
 - 8) The number and description of alternate standards granted, permit modifications for reclamation, public hearings, reclamation violations, reclamation enforcement actions,

²⁶ As required by Wisc. Admin. Code NR 135.37.

reclamation forfeitures, and amount of financial assurances used by the [Local Unit of Government] for reclamation.

B. RECLAMATION RELEASE

1. Reclamation Plan Certification

- a. The operator shall notify the [Local Unit of Government] at the time that it determines that reclamation of any portion of the mining site or the entire site is complete.
- b. The [Local Unit of Government] shall inspect the mining site or portion thereof to determine if reclamation has been carried out in accordance with the reclamation plan.

2. Assessing Reclamation

- a. The criteria for determining when reclamation is complete shall have been specified in the reclamation plan.
- b. Compliance with the revegetation success standards of the reclamation plan shall be determined by:
 - 1) On-site inspections; and
 - 2) Reports of reclamation evaluations, including summarized data on revegetation, photo documentation, or other evidence demonstrating that the criteria of the reclamation plan for ascertaining success have been met.
- c. Revegetation success may be determined by:
 - 1) Comparison to an appropriate reference area;
 - 2) Comparison to baseline data acquired at the nonmetallic mining site prior to its being affected by mining; or
 - 3) Comparison to an approved alternate standard.
- d. Within sixty (60) days of receiving notice of reclamation, the [Local Unit of Government] shall inspect and provide a written determination that:
 - 1) Reclamation is not yet complete;
 - 2) It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;
 - 3) Reclamation is complete in a part of the mine; or
 - 4) Reclamation is fully complete.
- e. If reclamation is complete for part or all of a nonmetallic mining site, then:
 - 1) No annual fee shall be assessed for the area so certified; and
 - 2) The financial assurance shall be released or appropriately reduced.
- f. If the [Local Unit of Government] does not provide a written response within sixty (60) days of receiving notice of reclamation, the annual

fee paid for that portion of the nonmetallic mining site shall be refunded.

C. ENFORCEMENT

1. Procedures

- a. The [Local Unit of Government] may institute any appropriate action or proceeding against violators of this ordinance as provided by law or this ordinance, including issuing citations or commencing a lawsuit seeking forfeitures and/or injunctive relief.
- b. In general, the [Local Unit of Government] shall use the following, in the order listed, to address violations of this ordinance:
 - 1) Issue a notice of violation and order that specifies the corrective action to be taken.
 - 2) Issue a citation for a violation.
 - 3) Refer the matter to the legal counsel for evaluation and commencement of a lawsuit when the violation merits such action.
- c. The [Local Unit of Government] is not mandated to follow the order of possible action if, in the [Local Unit of Government's] discretion, a situation requires different action.
- d. After notice and a hearing, a nonmetallic mining and reclamation permit may be suspended or revoked by the [Local Unit of Government] if the conditions of the permit are violated.

2. Penalties.

- a. Any violations under Wisconsin Statute Subchapter 1 of Chapter 295 or Wisconsin Administrative Code NR 135 relating to reclamation will result in forfeitures as specified in Wisconsin Statute § 295.19(3) and Wisconsin Administrative Code NR 135.43.
- b. Except for the violations referred to in Subsection (a), any person who violates this ordinance, a permit issued to this ordinance, or an order of the [Local Unit of Government] shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of violation is a separate offense.