

CHAPTER 36

NONMETALLIC MINING RECLAMATION

PART I – GENERAL

- SECTION 1 **1.00 Title.** Nonmetallic mining reclamation ordinance for the County of Door. This Ordinance shall be designated as Chapter 36, Door County Code.
- SECTION 2 **2.00 Purpose.** The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the County of Door, after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.
- SECTION 3 **3.00 Statutory Authority.** This chapter is adopted under authority of Section 295.13(1), Wisconsin Statutes, Section NR 135.32, Wisconsin Administrative Code and Section 59.51, Wisconsin Statutes.
- SECTION 4 **4.00 Restrictions Adopted Under Other Authority.** The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by Section 295.12(1)(a), Wisconsin Statutes and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
- SECTION 5 **5.00 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 required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.
- SECTION 6 **6.00 Severability.** Should any portion of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.
- SECTION 7 **7.00 Applicability.**
- 7.10 Overall Applicability.** The requirements of this chapter apply to all operators of nonmetallic mining sites within the County of Door except as exempted in **sub. 7.20** and for nonmetallic mining sites located in a city, village or town within the County of Door that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code. This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This chapter applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or county 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 **sub. 14.20**.

7.20 Exemptions. This chapter does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code, including:

- (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 under Secs. 30.19, 30.195 or 30.20, Wisconsin Statutes, and complies with Chapter NR 340, Wisconsin Administrative Code.
- (2) Excavations subject to the permit and reclamation requirements of Secs. 30.30 or 30.31, Wisconsin Statutes
- (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (4) Pond excavations if all excavated material remains on the site.
- (5) 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.
- (6) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- (7) Excavations for building construction purposes conducted on the building site.
- (8) Nonmetallic mining at nonmetallic mining sites where less than one acre of affected acreage occurs over the life of the mine.
- (9) Any mining operation, the reclamation of which is required in a permit obtained under Chapter 293, Wisconsin Statutes.
- (10) Any activities required to prepare, operate or close a solid waste disposal facility under Chapter 289, Wisconsin Statutes, or a hazardous waste disposal facility under Chapter 291, Wisconsin Statutes, that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (11)
 - (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, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
 - (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 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.
 - (c) If a nonmetallic mining site covered under **pars. (a) and (b)** is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
- (12) 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.
- (13) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21, Wisconsin Statutes.

- SECTION 8 **8.00 Administration.** The provisions of this chapter shall be administered by the Soil and Water Conservation Department under the supervision of the Land Conservation Committee.
- SECTION 9 **9.00 Effective Date.** The provisions of this chapter shall take effect on June 1st, 2001.
- SECTION 10 **10.00 Definitions.** Definitions for the purposes of this chapter are those contained in Section NR 135.03, Wisconsin Administrative Code, including:
- (1) "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the Door County Soil and Water Conservation Department pursuant to **s.18**.
 - (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 Chapter 295, Wisconsin Statutes.
 - (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, phased 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) "Department" means the Wisconsin Department of Natural Resources.
 - (6) "Environmental pollution" has the meaning in s. 295.11(2), Wisconsin Statutes.
 - (7) "Financial assurance" means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in **s. 14** and is sufficient to pay for reclamation activities required by this chapter.
 - (8) "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.
 - (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) "Licensed professional geologist" means a person who is licensed as a professional geologist pursuant to Chapter 470 Wisconsin Statutes.
 - (11) "Municipality" means any city, town or village.
 - (12) "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.
 - (13) "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.

- (14) "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.
- (15) "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.
- (14) "Nonmetallic mining site" or "site" means all contiguous areas of present or proposed mining described in **par. (a)**, subject to the qualifications in **par. (b)**.
 - (a) Nonmetallic mining site means the following:
 - 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.
 - 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.
 - (b) "Nonmetallic mine site" does not include any of the following areas:
 - 1. Those portions of sites listed in **par. (a)** 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, 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.
- (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) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.
- (18) "Registered professional engineer" means a person who is registered as a professional engineer pursuant to Secs. 443.04 and 443.09, Wisconsin Statutes.
- (19) "Regulatory authority" means the County of Door for nonmetallic mine sites located within its jurisdiction.

- (20) "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 mining 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.
- (21) "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 Chapter 283, Wisconsin Statutes, or source material, special nuclear material or by-product material, as defined in s. 254.31 (1), Wisconsin Statutes.
- (22) "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.
- (15) "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.
 - (a) "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 **sub. 29.30**. However the term does not include any areas described in **par. (b)**.
 - (b) "Unreclaimed acre" or "unreclaimed acres" does not include:
 1. Those areas where reclamation has been completed and certified as reclaimed under **sub. 29.30**.
 2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 3. 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.
 4. 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.
 5. For purposes of fees under **s. 27**, those areas within a nonmetallic mining site which the Door County Soil and Water Conservation Department has determined to have been successfully reclaimed on an interim basis in accordance with **sub. 29.30**.

PART II - STANDARDS

SECTION 11

11.00 Standards. Standards, and application thereof, shall be as set out in Subchapter II, "Standards", Chapter NR 135, Wisconsin Administrative Code, including:

11.10 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, Wisconsin Statutes.

- (2) **AREA DISTURBED AND CONTEMPORANEOUS RECLAMATION.** Nonmetallic mining reclamation shall be conducted in phases, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining 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 required by 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, 151, 340, 500-590, and 812, Wisconsin Administrative Code, chs. 30 and 91, Stats., and Section 404 of the Clean Water Act (33 USC s. 1344), which may be applicable to all or part of either an existing or proposed nonmetallic mining project as long as they do directly regulate the operations of nonmetallic mining sites.

11.20 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 erosion control, 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.

11.30 Groundwater Protection.

- (1) **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.
- (2) **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.

11.40 Topsoil Management.

- (1) **REMOVAL.** Topsoil and topsoil substitute material shall be removed, protected and redistributed to support reclamation and site stabilization. Topsoil shall be provided and managed as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation to the approved post-mining land use. Removal of onsite topsoil and topsoil substitute material, when specified in the reclamation plan, shall be performed prior to any mining activity associated with any specific phase of the mining operation.
- (2) **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.

Note: Existing resources that may be used to identify the soil present on a site include the Door County Soil Survey, (<http://map.co.door.wi.us/Website/doorbase3/doorlio3.asp>) or other available information including that obtained from a NRCS Soil Scientist, the University of Wisconsin Extension Agricultural Agent or other qualified professional. Topsoil or topsoil substitute shall be removed from areas to be affected by mining operations to the depth specified in the approved reclamation plan.

- (3) 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.

11.50 Final grading and slopes.

- (1) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to **s. 13** to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either: a site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration to demonstrate that a stable and safe condition be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.
- (2) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under **s. 18**; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. 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.
- (3) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water 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.

11.60 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 which 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.

11.70 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.

Note: Field test plot demonstrations are highly recommended to ensure that reclamation success standards are met and financial assurance is released as quickly as possible. When field test plots are employed they should be approved as part of the reclamation plan under s. 13.

11.80 Assessing Completion of Successful Reclamation.

- (1) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be quantifiable.
- (2) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - (a.) On-site inspections by the Soil and Water Conservation Department;
 - (b.) Reports 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
 - (c.) A combination of inspections and reports.
- (3) 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.
- (4) Revegetation success may be determined by:
 - (a.) Comparison to an appropriate reference area;
 - (b.) Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - (c.) Comparison to an approved alternate technical standard.
- (5) Revegetation using a variety of plants indigenous to the area is favored.

11.90 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 erosion of sediments is occurring, and financial assurance for reclamation pursuant to **s. 14** is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

11.100 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 12

12.00 Nonmetallic Mining Reclamation Permit Required. No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in **subs. 7.10, 7.20 or 10(17)(b)**.

12.10 Required Submittal. All operators of nonmetallic mining sites shall apply for a reclamation permit from the County of Door Soil and Water Conservation Department. All applications for reclamation permits under this section shall use the Door County Nonmetallic Mining Reclamation Permit Application pursuant to NR 135.18 Wisconsin Administrative Code.

12.20 Reclamation Permit Application Contents. The operator of any nonmetallic mine site shall apply for and obtain a reclamation permit before beginning mining operations. This application shall meet the requirements specified below.

- (1) **The information required by** sub. 12.10.
- (2) The plan review and annual fees required by **secs. 26 and 27**.
- (3) A reclamation plan conforming to **s. 13**.
- (4) A certification that the operator will provide, as a condition of the reclamation permit, provide financial assurance as required by **s. 14** upon granting of the reclamation permit and before mining begins.
- (5) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

SECTION 13 **13.00 Reclamation Plan.**

13.10 Reclamation Plan Required. All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.

13.20 Existing Plans and Approvals. To avoid duplication of effort, the reclamation plan required by **sub. 13.10** may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

13.30 Approval of Reclamation Plan. The County of Door shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with **sub. 16.20** for mines that apply for a reclamation permit in conformance with **s. 12**. Conditional approvals of reclamation plans shall be made according to **sub. 16.50**, and denials of reclamation plans made pursuant to **s. 17**. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

SECTION 14 **14.00 Finance**

14.10 Financial Assurance Requirements. All operators of nonmetallic mining sites in the County of Door shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section NR 135.40, Wisconsin Administrative Code. The regulatory authority shall determine and will provide written notification to the operator of what is required to comply with financial assurance mandates.

14.20 Public Nonmetallic Mining. The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, county or a municipality.

14.30 Condition Precedent. Compliance with financial assurance requirements is a condition precedent to a permit being issued, a permit being effective, and a permit continuing to be effective.

SECTION 15 **15.00 Public Notice and Right of Hearing.**

15.10 Reclamation Plan Hearing. The County of Door shall provide public notice and the opportunity for a public informational hearing as set forth in Sections NR 135.20(1) and (2), Wisconsin Administrative Code for any nonmetallic mining site for which a complete reclamation permit application that satisfies **s. 12** is received.

15.20 Local Transportation-Related Mines. No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to **sub. 16.50**.

15.30 Responsibility. The Soil and Water Conservation Department shall be responsible for publishing the public notice and conducting the local informational meeting.

SECTION 16

16.00 Issuance of a Nonmetallic Mining Reclamation Permit.

16.10 Permit Required. No person may engage in nonmetallic mining or nonmetallic mining reclamation in the County of Door without first obtaining a reclamation permit issued under this section ,except for nonmetallic mining sites that are exempt from this chapter under **subs. 7.10, 7.20 or 10(17)(b)**.

16.20 Permit Issuance. Applications for reclamation permits for nonmetallic mining sites that satisfy **s. 12** shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21(1), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with **sub. 13.30**, and provision by the applicant of financial assurance that conforms with **sub. 14.30** payable to the County of Door prior to beginning mining.

16.30 Automatic Permit for Local Transportation-Related Mines. The County of Door shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Sections NR 135.23(1)(b) through (j), Wisconsin Administrative Code.

16.40 Expedited Review. Any operator of a nonmetallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in **s. 26.20**. The expedited review shall be carried out according to the provisions of Section NR 135.23(2), Wisconsin Administrative Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to **s. 15**.

16.50 Permit Conditions. Permits issued under this section may include conditions as provided in Section NR 135.21(2), Wisconsin Administrative Code. One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to Section NR 135.40, Wisconsin Administrative Code.

SECTION 17

17.00 Permit Denial. An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exist. If a permit for a new or reopened mine is denied, the annual fee paid shall be refunded if and as provided for in Chapter NR 135, Wisconsin Administrative Code.

SECTION 18

18.00 Alternative Requirements.

18.10 Decision Making Authority. The Door County Land Conservation Committee shall consider and decide any request for alternative requirements under Section NR 135.26 Wisconsin Administrative Code, pursuant to any procedures the Committee chooses for evaluating such requests, and in accordance with applicable law.

18.20 Scope of Alternative Requirements Approvable. An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in **s. 11**. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.

18.30 Procedures. The operator of a nonmetallic mining site requesting an alternative requirement shall submit the request in writing to the Soil and Water Conservation Department. The request shall include and demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. The operator must prove that there is no feasible means to comply with the reclamation standards. Financial considerations, matters of convenience or preference, and self imposed hardships shall not be deemed or considered to be "unnecessary hardship". Requests for alternative requirements shall be sparingly approved.

The Land Conservation Committee will provide for public notice and right of hearing as set out in Section NR 135.20 Wisconsin Administrative Code if the Committee determines, to a level of probable cause from the four corners of the written request, that all applicable criteria have been met.

18.40 Transmittal of Decision on Request for Alternate Requirements. The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.

18.50 Notice to Wisconsin Department of Natural Resources. The County of Door shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3), Wisconsin Administrative Code.

18.60 Fees. The alternative requirement request fee shall be submitted with the written request as set out in **sub. 18.30**. The fee amount shall be established by the Land Conservation Committee.

SECTION 19 **19.00 Permit Duration.** 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 **sub. 32.20**, or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.

SECTION 20 **20.00 Permit Transfer.** A nonmetallic mining reclamation permit issued under this chapter may be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.

SECTION 21 **21.00 Previously Permitted Sites.** For any nonmetallic mining site which had a reclamation permit previously issued pursuant to Chapter NR 135, Wisconsin Administrative Code that becomes subject to reclamation permitting authority of Door County the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified by Door County, pursuant to **sub. 23.10**.

SECTION 22 **22.00 Review.** Any permitting decision or action made by the County of Door under this chapter may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

PART IV - ADMINISTRATION

SECTION 23 **23.00 Permit Modification.**

23.10 By the County of Door. A nonmetallic mining reclamation permit issued under this chapter may be modified by the County of Door if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with this chapter. Such modification shall be by an order conforming with the procedures in **s. 32** and as provided in Section NR 135.24(1), Wisconsin Administrative Code.

23.20 At the Operator's Option. If 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 Soil and Water Conservation Department. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.

23.30 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 required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

23.40 Review. All actions on permit modifications requested or initiated under this section are subject to review under **s. 22**.

SECTION 24 **24.00 Permit Suspension or Revocation**

24.10 Grounds. The County of Door may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter and Section NR 135.25(1), Wisconsin Administrative Code.

24.20 Procedures. If the County of Door finds grounds for suspending or revoking a nonmetallic mining reclamation permit, it may issue a special order suspending or revoking such permit as set forth in **sub. 32.20**.

24.30 Consequences. The consequences of a reclamation permit suspension or revocation order shall be as set forth in Sections NR 135.25(2) and (3), Wisconsin Administrative Code.

SECTION 25 **25.00 Annual Operator Reporting.**

25.10 Contents and Deadline. Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Section NR 135.36, Wisconsin Administrative Code. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under **sub. 29.30**. The Soil and Water Conservation Department shall specify, and make available, forms to be used for annual reporting.

25.20 Inspection in Lieu of Report. The County of Door may, at its discretion, obtain the information required in **sub. 25.10** by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.

25.30 Retention of Annual Reports. Annual reports submitted under this section or inspection records that replace them shall be retained by the County of Door for at least 10 years after the calendar year to which they apply. These records, or 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 26 **26.00 Plan Review Fees.**

26.10 Amount and Applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **s. 12** shall submit a non-refundable plan review fee to the Soil and Water Conservation Department as set forth in NR 135.39(5) Wisconsin Administrative Code and the fee schedule established by the Land Conservation Committee. No plan review fee may be assessed under this section for any local transportation-related mining receiving an automatic permit under **sub. 16.30**. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to **s. 23**.

26.20 Expedited Plan Review Fee. An applicant may request expedited permit review in accordance with NR 135.23(2) Wisconsin Administrative Code. The expedited plan review fee shall be \$500 and shall be in addition to the plan review fee under **sub. 26.10**.

26.30 Relation to Annual Fee. The reclamation plan review fee and, if applicable, the expedited reclamation plan review fee shall be added to and collected as part of the annual fees under **s. 27**.

SECTION 27 **27.00 Annual Fees.**

27.10 Areas Subject to Fees. Annual fees shall be assessed pursuant to and in accordance with section NR 135.39(1) Wisconsin Administrative Code.

27.20 Amount. The amount of annual fees shall be as established by the Land Conservation Committee.

27.30 Department's / County's Share. The Department's and County's share of annual fees shall be as set out in NR 135.39(3) and (4), Wisconsin Administrative Code.

27.40 Collection / Payment. Payment and collection of annual fees shall be as set out in NR 135.39(2) Wisconsin Administrative Code

SECTION 28

28.00 Regulatory Reporting and Documentation.

28.10 Reporting. The County of Door shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code.

28.20 Documentation. The County of Door shall, to the best of its ability, maintain the information set forth in Section NR 135.47(3), Wisconsin Administrative Code, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the County of Door's reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

SECTION 29

29.00 Completed Reclamation - Reporting, Certification and Effect

29.10 Reporting. The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Certification is to be filed with, on forms specified and in accordance with procedures established by, the Soil and Water Conservation Department.

29.20 Reporting of Interim Reclamation. The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in **sub. 29.10**.

29.30 Certification of Completed Reclamation. The County of Door 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 in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including revegetation as specified in a plan that conforms with **s. 13**, the County of Door shall issue the mine operator a written certificate of completion.

29.40 Effect of Completed Reclamation. If reclamation is certified by the County of Door as complete under **sub. 29.30** for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under **s. 27** for the area so certified.
- (2) The financial assurance required by **s. 14** may be reduced or waived for the area so certified.

29.50 Effect of Inaction Following Report of Completed Reclamation. If no written response as required by **sub. 29.30** for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the County of Door for it under **s. 27** shall be refunded.

SECTION 30

30.00 Permit Termination. When all final reclamation required by a reclamation plan conforming to **s. 13** and required by this chapter is certified as complete pursuant to **s. 29**, the County of Door shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

PART V - ENFORCEMENT

- SECTION 31 **31.00 Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of the County of Door may inspect any nonmetallic mining site subject to this chapter as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.
- SECTION 32 **32.00 Orders and Citations.**
- 32.10 Enforcement Orders.** The County of Door may issue orders as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter. A violation of this chapter, an order or permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.
- 32.20 Special Orders.** The County of Door may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to **s. 24**, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.
- 32.30 Review of Orders.** An order issued under sub. 32.10 or sub. 32.20 may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.
- 32.40 Citations.** The County of Door may issue a citation under Section 66.119, Wisconsin Statutes and Chapter 35 of the Door County Code to collect forfeitures or require any action needed to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.
- 32.50 Enforcement.** The County of Door may submit any order issued under **s. 32** to the district attorney, the corporation counsel, the municipal attorney or the attorney general for enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.
- SECTION 33 **33.00 Penalties.** Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter may result in forfeitures as provided in Section 295.19(3), Wisconsin Statutes and Chapter 35 of the Door County Code.
- SECTION 34 **34.00 Applicable Legal Authority.** Any citation to the Wisconsin Statutes, Wisconsin Administrative Code, or Door County Code herein refers to that which was in effect when this ordinance was enacted or as the Wisconsin Statutes, Wisconsin Administrative Code or Door County Code is subsequently amended or revised.

(Ord. 02-01; 5/22/01) (Ord. 2007-10; 5/22/07)