

WASHINGTON COUNTY CODE

CHAPTER 18

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CHAPTER 18

NONMETALLIC MINING RECLAMATION

18.01 GENERAL. (1)(CR 01-12) **Title.** Nonmetallic mining reclamation ordinance for Washington County.

(2)(CR 01-12) **Purpose and Intent.** The purpose of this chapter is to adopt and implement effective reclamation requirements for nonmetallic mining sites in Washington County, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wis. Stats. This chapter is not intended to relax, impair or interfere with any existing reclamation requirements that have been established for nonmetallic mines through local zoning regulations prior to the effective date of this ordinance. This chapter is also not intended to interfere with or alter any existing zoning rules or regulations relating to the location, operation or end land use of a nonmetallic mining facility.

(3)(CR 01-12) **Statutory Authority.** This chapter is adopted under authority of §295.13(1), Wis. Stats., Section NR 135.32, Wisconsin Administrative Code, and §59.51, Wis. Stats.

(4)(CR 01-12) **Abrogation and Other Restrictions Adopted Under Other Authority.** This chapter is not intended to repeal, abrogate, annul, impair or interfere with any existing laws, rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

(5)(CR 01-12) **Interpretation.** The interpretation and application of 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, Wis. Stats. and Chapter NR 135, Wisconsin Administrative Code. Where any provision or requirements of this chapter are determined to 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 Chapter NR 135, Wisconsin Administrative Code, and where the provision of this chapter is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

(6)(CR 01-12) **Severability.** Should any portion of this chapter be adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

(7)(CR 01-12) **Jurisdiction.** The provisions of this chapter shall apply to all incorporated and unincorporated lands within the jurisdictional boundaries of Washington County where the local governing authority has not adopted similar provisions or entered into an intergovernmental agreement with Washington County for ordinance administration services.

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(8)(CR 01-12)(AM 06-29)(AM 07-4) **Applicability.** (a) The requirements of this chapter shall apply to all nonmetallic mining sites and operators of nonmetallic mining sites within the county, except for the following:

1. Sites that meet at least one of the exemption criteria under sub. 18.01(9); or
2. Sites located entirely within a city, village or town that has adopted similar ordinance provisions approved by the Wisconsin Department of Natural Resources pursuant to §295.14, Wis. Stats., and Section NR 135.32(2), Wisconsin Administrative Code; or

(b) The requirements of this chapter apply to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a county, municipality or for the benefit or use of the state or any state agency, board, commission or department, except for requirements exempted in 18.01(9) and those requirements relating to financial assurance under sub. 18.04.

(9)(CR 01-12) **Exemptions.** This chapter does not apply to the following:

(a) Nonmetallic sites or portions thereof not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.

(b) 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.

(c) Nonmetallic mining at a site or portions thereof subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under §§30.19, 30.195 or 30.20, Wis. Stats., and complies with Chapter NR 340, Wisconsin Administrative Code.

(d) Excavations subject to the permit and reclamation requirements of §§30.30 or 30.31, Wis. Stats.

(e) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

(f) 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.

(g) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(h) Excavations for building construction purposes conducted on the building site where the removal or sale of nonmetallic materials from the site is determined by the County to be incidental to the project and an approved site stabilization plan has been approved as a condition of a building permit.

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(i) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.

(j) Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.

(k) Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located. This exemption does not apply to offsite mining activities such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(l) 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 following provisions:

1. The nonmetallic mining operation is subject to the requirements of the Wisconsin Department of Transportation concerning the reclamation of the nonmetallic mining site;

2. The Wisconsin Department of Transportation is actively enforcing reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements;

3. The purpose of the nonmetallic mining operation is limited to supplying nonmetallic minerals to the transportation project;

4. 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 and duration;

5. Sites under par. (j) 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.

(m) Dredging for navigational purposes, to construct or maintain farm drainage ditches, to maintain water depth in an existing pond or stormwater management facility and for the remediation of environmental contamination and the disposal of spoils from these activities.

(n) 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.

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(10)(CR 01-12)(AM 06-29) **Administration.** This chapter shall be administered by the Washington County Planning and Parks Department.

(11)(CR 01-12)(AM 06-29)(AM 07-4) **Definitions.** For the purposes of administering and enforcing this chapter, the terms or words used herein shall be interpreted as commonly used unless a specific definition is provided. Words used in the present tense include the future, words used in the singular number shall include the plural number, words in the plural number include the singular number. The word "shall" is mandatory, not permissive. The following terms used in this chapter mean:

(a) "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by Washington County pursuant to sub. 18.02(10).

(b) "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.

(c) "Contemporaneous reclamation" means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations 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.

(d) "County" means Washington County or the Washington County Planning and Parks Department.

(e) "Environmental pollution" has the meaning in §295.11(2), Wis. Stats.

(f) "Existing mine" means a nonmetallic mine where nonmetallic mining takes place before August 1, 2001.

(g) "Financial assurance" means a commitment of funds or resources by an operator to satisfy the requirements in 18.04 and is sufficient to cover all costs relating to reclamation activities required by this chapter.

(h) "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.

(i) "Intermittent mining" means the temporary cessation of mining activities on a nonmetallic mining site or a portion or portions of a nonmetallic mining site.

(j) "Landowner" means the person who has fee simple title to land 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 fee simple title to that land or holds a land contract for that land.

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(k) "Licensed professional geologist" means a person who is licensed as a professional geologist pursuant to Chapter 470 of the Wisconsin Statutes.

(l) "Municipality" means any city, town or village.

(m) "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.

(n) "Nonmetallic mining" or "mining" means all of 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 but not limited to drilling, blasting, excavating, 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, 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.

(o) "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 applicable, the restoration of plant, fish and wildlife habitat.

(p) "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.

(q) "Nonmetallic mining site" or "site" means all contiguous areas where present or proposed mining activities are conducted, including the following:

1. The location where nonmetallic mineral extraction is proposed or conducted.

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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 to conduct nonmetallic mining or to carry out an approved nonmetallic mining reclamation plan
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.

(r) "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.

(s) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

(t) "Registered professional engineer" means a person who is registered as a professional engineer pursuant to §§443.04 and 443.09, Wis. Stats.

(u) "Regulatory authority" means any one of the following:

1. The county in which the nonmetallic mining site is located, that has an applicable reclamation ordinance under §295.13, Wis. Stats., except where a municipality has adopted an applicable reclamation ordinance pursuant to par. 2.

2. The municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under §295.14, Wis. Stats.

3. The department, in cases where a county mining reclamation program is no longer in effect under §295.14, Wis. Stats., but only if there is no applicable reclamation ordinance enacted by the municipality in which the nonmetallic mining site is located.

(v) "Replacement of topsoil" means the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this chapter.

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(w) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Ch. 283, Wis. Stats., or source material, special nuclear material or by-product material, as defined in §254.31 (1), Wis. Stats.

(x) "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.

(y) "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.

(z) "Unreclaimed acre" or "unreclaimed acres" means those areas in which nonmetallic mining has occurred after August 1, 2001, but which have not been reclaimed or certified as reclaimed under sub. 18.10(3).

18.02 STANDARDS. (CR 01-12) All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained below.

(1)(CR 01-12) **General Standards.** (a) 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 local ordinances and administrative rules of the Wisconsin Department of Natural Resources adopted pursuant to Chs. 289 and 291, Wis. Stats.

(b) Area Disturbed and Contemporaneous Reclamation. Nonmetallic mining reclamation shall be conducted, 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.

(c) 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.

(d) Habitat Restoration. When the post-mining land use 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 mining operations.

(e) 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.

(2)(CR 01-12) **Surface Water and Wetlands Protection.** Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR 102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter and provisions of Chapter 17, Washington County Code. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(3)(CR 01-12) **Groundwater Protection.** (a) Groundwater Quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.

(b) Groundwater Quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Chapter NR 140, Wisconsin Administrative Code to be exceeded at a point of standards application defined in that chapter.

(4)(CR 01-12)(AM 07-4) **Topsoil Management.** (a) Removal. Topsoil and topsoil substitute material shall be provided as specified in the approved reclamation plan in order to achieve reclamation to the approved post-mining land use. Removal of on-site 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.

(b) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.

(c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

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(5)(CR 01-12)(AM 07-4) **Final Grading and Slopes.** (a) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to 18.03, 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 will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.

(b) 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 18.02(10); 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.

(c) If the end land use of the mining area includes a permanent waterbody, it must be constructed to conform with other applicable County standards for artificially constructed water bodies.

(6)(CR 01-12) **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.

(7)(CR 01-12) **Revegetation and Site Stabilization.** (a) 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 in accordance with the approved reclamation plan and post-mining land-use, and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

(b) 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.

(c) Revegetation using a variety of plants indigenous to the area is favored.

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(8)(CR 01-12) **Intermittent Mining.** Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or off-site sedimentation is occurring, and financial assurance for reclamation pursuant to 18.04 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

(9)(CR 01-12) **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.

(10)(CR 01-12) **Alternative Requirements.** Alternatives to the standards under subs. (1) through (7) may be requested and considered as set forth below.

(a) Scope of Approvable Alternative Requirements. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in sec. 18.02. The County may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and the County finds that all of the following criteria are met:

1. The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternative requirement.

2. Unnecessary hardship unique to the nonmetallic mining site or plan will result unless the alternative requirement is approved.

3. Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.

(b) Request Procedures. A request for alternative requirements shall be in writing and submitted in conjunction with an application for a new or modified reclamation permit. The request shall describe how criteria under sub. (a) apply to the site.

(c) Decisions. The County shall, within 30 days of receipt of the request, transmit in writing its decision to approve, conditionally approve or deny the request, based its determination of compliance with the criteria under sub. 18.02(10)(a). The written response shall include reasons why the request was or was not approved.

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

18.03 RECLAMATION PLAN. (1)(CR 01-12)(AM 06-29)(AM 07-4) **Reclamation Plan Requirements.** In order to obtain a permit under sec. 18.05, all operators of nonmetallic mining sites subject to this chapter shall prepare and submit to the County a reclamation plan that meets the requirements of this section. Existing reclamation plans may be submitted to satisfy the requirements of this section, including those previously approved by a town, city, village or County.

(a) Plan Standards. Reclamation plans shall comply with the standards of sec. 18.02. Plan view maps shall be at a scale of 1 inch equals no more than 100 feet and meet national map accuracy standards for the scale to which drawn.

(b) Existing Site Information. The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:

1. Plan view Maps of the nonmetallic mining site including:
 - a. Property boundaries and dimensions;
 - b. Delineation, labeling and measurement (in acres) of the general use of each area on the site;
 - c. The distribution, thickness and type of topsoil;
 - d. The approximate elevation of ground water; as determined by existing hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.
 - e. The location of surface waters;
 - f. Existing topography using contour lines at 5 foot intervals where existing topographic maps have been prepared prior to August 1, 2000, and 2 foot intervals for all maps prepared after August 1, 2000;
 - g. The existing drainage patterns; and,
 - h. Shoreland, floodplain, wetland and environmental corridor boundaries.
2. Available information on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine sites.
3. Location of manmade features on or near the site.

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4. For proposed mines, the plan view map under par. 1. shall also show the location and extent of land previously affected by nonmetallic mining activities, including but not limited to the location of stockpiles, wash ponds and sediment basins.

5. The County may require that licensed hydrogeologist be retained by the operator to help develop recommendations that will ensure reclamation plans comply with groundwater standards under sub. 18.02(3).

6. Topsoil or topsoil substitute material, if required to support revegetation needed for reclaiming the site to approved post-mining land use, can be identified using county soil surveys or other available information including that obtained from a soil scientist or the University of Wisconsin soil science extension agent or other available information resources.

(c) Post-Mining Land Use. 1. The reclamation plan shall specify a proposed post-mining land use for the site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The County may require documentation from the applicable municipality to assist in determining compliance with this requirement. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.

2. Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to §91.75, Wis. Stats., shall be restored to agricultural use.

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

1. A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures and if necessary, a site-specific engineering analysis performed by a registered professional engineer as provided by 18.02(5).

2. The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.

3. A plan view map which shows existing and planned topography, using contour lines at 2' intervals, of the reclaimed site and any water impoundments or artificial waterbodies needed to support the anticipated future land use of the site.

4. A plan or map which shows surface structures, roads and related facilities after the cessation of mining.

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5. The estimated quantities and installed costs (using County or industry averages) for fill, topsoil, topsoil substitute material, erosion control and other materials needed for reclamation for each stage of the project or the entire site if reclamation staging is not planned.

6. A revegetation plan which shall include timing and methods of seed bed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.

7. 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 percent vegetative cover, productivity, plant density, diversity or other applicable measures.

8. A plan and narrative showing erosion control measures to be employed during reclamation activities, including a description of how reclamation activities including will be conducted to minimize erosion and pollution of surface and groundwater.

9. A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to sec. 18.10 and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved and methods of reclamation to comply with the standards in sec. 18.02.

10. A schedule outlining the completion dates for all interim and final reclamation.

11. A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall 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 uses.

(e) Reclamation Measures for Building Sites. For building sites where the sale or use of nonmetallic materials is not considered incidental to the project, as determined by the county, the reclamation plan must describe contingency reclamation measures to be used, in accordance with the standards under sec. 18.02, if the proposed building plans are cancelled subsequent to excavation commencing.

(f) Criteria for Assessing Completion of Successful Reclamation. The reclamation plan shall specify criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released. Criteria to evaluate reclamation success shall be quantifiable. Success of revegetation shall be determined by the following:

1. Comparison to an appropriate reference area; or
2. Comparison to baseline data acquired at the mining site prior to it being affected by mining, as presented in an approved reclamation plan;

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(g) Certification of Reclamation Plan. 1. The operator shall provide a signed certification to the County that reclamation will be carried out in accordance with the proposed reclamation plan.

2. The operator shall provide the County with written documentation that the landowner or lessor, if different from the operator, concurs with the reclamation plan and will allow its implementation, except as provided in sub. 3. Written documentation shall be in the form of a signed statement by the landowner or lessor, which authorizes the operator to carry out the reclamation plan.

3. The operator is not required to submit written certification in accordance with sub. 1 and 2. if the following conditions are met:

a. The operator provides to the County written evidence that the landowner and lessee, if different from the operator, have been provided with a written copy of the reclamation plan, and

b. The operator has submitted a reclamation plan for a new or reopened mine in accordance with sub. 18.05(2)(b) which is located on land for which a lease agreement or memorandum of lease between the landowner and applicant was recorded prior August 1, 2001.

(h) Approval. The regulatory authority shall approve, approve conditionally or deny the reclamation plan in writing in accordance with sub. 18.05(3); and denials of permit applications shall be made according to sub. 18.05(5).

(2)(CR 01-12) **Reclamation Plan to be Retained On Site.** The operator shall keep a copy of the reclamation plan approved under sec. 18.03 at the mine site or, if not practicable, at the operator's place of business nearest to the site.

18.04 FINANCIAL ASSURANCE. (1)(CR-01-12)(AM 06-29) **Financial Assurance Requirements.** Operators of nonmetallic mining sites in the County, except as provided under sub. (2) shall prepare and submit a proof of financial assurance as provided below:

(a) Notification. The County shall provide written notification to the operator of the amount of financial assurance required under sub. 18.04(1)(c).

(b) Filing. Following approval of the nonmetallic mining reclamation plan, and as a condition of issuing the permit, the operator shall submit the financial assurance to the County. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter and the reclamation plan. Financial assurance shall be payable exclusively to the County, except as provided in sub. (f).

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(c) Amount and Duration of Financial Assurance. The amount of financial assurance shall equal as closely as possible the cost to the County of hiring a contractor to complete either final reclamation or interim reclamation according to the approved reclamation plan for all sites the operator has under project permits. The County shall consider and may include the estimated costs under sub. 18.03(1)(d)5. in determining the amount of the financial assurance. The County shall review periodically the amount of financial assurance to assure it equals outstanding reclamation costs. The County may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. The period of the financial assurance is dictated by the duration of mining operations, including reclamation, and shall continue until such time that the County certifies final reclamation is complete.

(d) Form and Management. The form of financial assurance shall be subject to approval by the County and payable to Washington County. Financial assurance methods include, but are not limited to cash, bond, certificates of deposits, irrevocable letters of credit, irrevocable trusts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any earned interest from the financial assurance shall be paid to the operator. Certificates of deposit and other assurances with maturity dates shall be automatically renewable or other assurances shall be provided to the County at least 30 days before their maturity date.

(e) Multiple Projects. Any operator who obtains a permit from Washington County for 2 or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance for multiple projects, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by Washington County.

(f) Multiple Jurisdictions. In cases where the County and at least one other unit of government has jurisdiction over a single mining site, a cooperative financial security arrangement may be developed and implemented, as provided in Chapter NR 135, Wisconsin Administrative Code.

(g) Certification of Completion and Release. The operator shall provide written notification to the County that final reclamation of any portion of the mining site or the entire site is complete. The County shall inspect the mine site or portion thereof that was the subject of the notice of completion as set forth under sub. 18.10(3) and release or partially release financial assurance as set forth under sub. 18.10(4).

(h) Forfeiture. Financial assurance shall be forfeited if any of the following occur:

1. A permit is revoked under sub. 18.07(2) and the appeals process under sub. 18.12 has been completed.

2. An operator ceases mining operations and fails to reclaim the site in accordance with the approved reclamation plan.

(i) Cancellation. Financial assurance shall provide that it may not be canceled or otherwise expire by the surety or other holder or issuer without a 90-day written notice by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the County a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

(j) Changing Methods of Financial Assurance. The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to sub. (L). The operator shall give Washington County at least 60 days written notice prior to changing methods of financial assurance and may not actually change methods without the written approval of Washington County.

(k) Bankruptcy Notification. The operator of a nonmetallic mining site shall notify the County by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within 10 days of commencement of the proceedings, by providing a copy of the bankruptcy petition and associated schedules.

(l) Adjustment of Financial Assurance. Financial assurance may be adjusted when required by the County. The County may notify the operator in writing that adjustment is necessary and the reasons therefore. The County may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.

(m) Net Worth Test. 1. Only an operator that meets the definition of “company” in §289.41(1)(b), Wis. Stats., may use the net worth method of providing financial assurance.

2. The operator shall submit information to the County in satisfaction of the net worth test requirements of §289.41(4), Wis. Stats. The criteria in §289.41 (6)(b), (d), (e), (f), (g), (h) and (i), Wis. Stats., shall apply.

3. An operator using the net worth test to provide financial assurance for more than one mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with §289.41(6), Wis. Stats.

4. Determinations under the net worth test shall be done in accordance with §289.41(5), Wis. Stats.

5. In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this chapter.

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(2)(CR 01-12)(AM 07-4) **Public Nonmetallic Mining Exempt.** The financial assurance requirements under 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.

18.05 PERMITTING. (1)(CR 01-12)(AM 06-29) **Permit Application 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. 18.01(9). All applications for permits under this section shall be submitted on a form provided by the County and shall include the following information:

- (a) A brief description of the general location and nature of the nonmetallic mine.
- (b) An accurate legal description of the property on which the nonmetallic mine is located or proposed, including the tax parcel identification number(s).
- (c) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
- (d) The name, mailing address, electronic mail address and telephone number of the person or organization who is the operator and the person who is the primary contact of the reclamation plan.
- (e) A certification by the operator of his or her intent to comply with the nonmetallic mining reclamation standards established by sec. 18.02.

(2)(CR 01-12)(AM 06-29) **Required Submittals.** All operators of nonmetallic mining sites shall submit the necessary application materials as set forth below:

- (a) Local Transportation-Related Mines. 1. The operator of an existing or proposed nonmetallic mine meeting the following criteria shall apply for an automatic permit under sub. 2.:
 - a. It will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
 - b. It is a nonmetallic mine intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the a municipality;
 - c. It is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;
 - d. It does not provide nonmetallic mining materials to sources outside of a municipal contract;

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e. It will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and

f. It is not otherwise exempt from the requirements of this chapter under sub. 18.01(9).

2. To request an automatic permit under this subsection, the applicant shall submit the following:

a. A completed permit application in accordance with sub. (1);

b. Written documentation of the terms and conditions of the contract with respect to reclamation of the proposed borrow site, including a copy of the reclamation plan and the name, address and telephone number of the person charged with oversight and enforcement of the reclamation provisions;

c. Written evidence reflecting that the borrow site and its reclamation is in compliance with applicable zoning requirements, if any; and

d. The first year's annual fee, in accordance with a fee schedule established by the County under sub. 18.09(2). Mines permitted under this subsection shall not be subject to the plan review fee under sub. 18.09(1).

(b) New Mines. The operator of any nonmetallic mine site shall submit all the items listed below to the County prior to beginning operations:

1. A completed application form as required by sub. (1).

2. The plan review and annual fees required under sec. 18.09.

3. A reclamation plan conforming to sec. 18.03

4. A certification by the operator that, as a condition of the reclamation permit, he or she will provide financial assurance as required under sec. 18.04.

(3)(CR 01-12)(AM 06-29)(AM 07-4) **Permit Issuance.** (a) Permit for New Mines. Applications for reclamation permits submitted under sub. (2)(b) shall be reviewed and processed in accordance with the following:

1. Within 30 days of receipt of all the required application materials, the County shall:

a. Determine if the applicable requirements of this chapter have been met;

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b. Determine if there is a need for additional information, or changes to the reclamation plans or other materials, to comply with this chapter;

c. Determine if public notice is required pursuant to sec. 18.06 for previously approved reclamation plans that require changes to comply with this chapter; and

d. Notify the applicant of the results of the determinations under subs. a. through c., including what additional information or changes are needed. Notification shall be in written or electronic form, unless otherwise waived by the applicant.

2. If the County determines that all of the requirements of this chapter have been met, and no public notice is required under sub. (b)1.c; all the submittals shall be approved by the County and a permit shall be issued upon compliance with the financial assurance provisions under sec. 18.04.

3. If the County approves all the materials submitted, and determines that a public informational hearing is required, the County shall publish a public notice and provide an opportunity for public hearing in accordance with sec. 18.06.

4. Any resubmittals under this subsection shall be subject to the procedures in subs. (1) through (3).

5. Notwithstanding sub (b)1., the County shall accept and approve existing reclamation plans that have been submitted to meet the requirements of this chapter provided the following:

a. They have been approved by a County or municipality; and

b. The County finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.

6. The County may approve the reclamation plan and other submittals with conditions that it deems necessary to ensure compliance with the requirements of this chapter.

7. The County may deny a permit application in accordance with sub. 18.05(5).

8. The regulatory authority may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this chapter. The approvals may not include conditions that are not related to reclamation. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to sec. 18.04 prior to beginning mining.

(b) Automatic Permit for Local Transportation-Related Mines. The following conditions and procedures shall apply to all permit applications received under sub. (2)(b):

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1. The County shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under sec. 18.03.

2. The County shall accept the contractual provisions in lieu of the financial assurance requirements under sec. 18.04.

3. The public notice and hearing provisions of sec. 18.06 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.

4. Within 7 days of receipt of the information under sub. 1. and 2., the County shall determine if all of the conditions of this subsection have been met and shall notify the applicant of the results of this determination in written or electronic form. If all conditions have been met, the County shall issue an automatic permit. If all the conditions have not been met, any resubmittals shall be subject to the same timeline for review.

5. Mines permitted under this subsection shall pay an annual fee to Washington County as provided in sub. 18.09(2), but shall not be subject to the plan review fee provided in sub. 18.09(1).

6. Notwithstanding sec. 18.08, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

(c) **Permit Issuance.** Unless the permit is denied pursuant to 18.05(5), the regulatory authority shall approve in writing an application submitted pursuant to 18.05(2)(b) to issue a nonmetallic mining reclamation permit for a proposed nonmetallic mine. The regulatory authority may issue a reclamation permit, subject to conditions in 18.05(3)(a)(8) if appropriate. The permit decision shall be made no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application and reclamation plan that meets the requirements of 18.03 pursuant to this subchapter, unless a public hearing is held pursuant to 18.06. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to 18.05(3)(a)(8) if appropriate, or shall deny the permit as provided in 18.05(5), no later than 60 days after completing the public hearing.

(d) **Cooperative Issuance by Multiple Authorities.** If more than one regulatory authority has jurisdiction over a single new nonmetallic mining site, the regulatory authorities shall cooperatively issue a single reclamation permit for the new nonmetallic mining site. Any irresolvable issues may be referred to the department under s. NR 135.52.

(4)(CR 01-12) **Expedited Review.** (a) Any permit applicant may request expedited review of a reclamation permit application in accordance with the following :

1. The request for expedited permit review shall be submitted in writing during the permit application process under this section, stating the need for such expedited review and the date by which such expedited review is requested; and

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2. The additional fee for expedited reviews established by the County under sub. 18.09(1)b. shall be paid at the time of application.

(b) Following receipt of a request under this subsection, the County shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under sub. (4) (a) shall be returned.

(c) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to sec. 18.06. This subsection does not impose an obligation upon the County to act upon a permit application under this subsection by a specific date.

(5)(CR 01-12) **Permit Denial.** An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

(a) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frames established under this section, if the County finds any of the following:

1. The applicant has, after being given an opportunity to make corrections, failed to provide to the County an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter.

2. The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained this chapter, Chapter NR 135, Wisconsin Administrative Code or subch. I. of Ch. 295, Wis. Stats.

3. a. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.

b. The following may be considered in making this determination of a pattern of serious violations:

1) Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.

2) Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Chapter NR 135, Wisconsin Administrative Code.

3) Forfeitures of financial assurance.

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4. A denial under this subsection shall be in writing and shall provide the reasons for denial.

(b) A decision to deny an application to issue a reclamation permit may be reviewed under sub. (9).

(6)(CR 01-12) **Permit Duration.** (a) A nonmetallic mining reclamation permit issued under this chapter shall continue through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to sub. 18.07(2) or after enforcement provisions of this chapter.

(b) If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to the provisions of this chapter.

(7)(CR 01-12) **Permit Transfer.** A nonmetallic mining reclamation permit issued under this chapter may be transferred to a new owner or operator upon satisfaction of the following conditions:

(a) A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the County of proof of financial assurance and a written certification by the proposed successor permit holder that all conditions of the permit will be complied with.

(b) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the County and the County makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the successor operator has received approval and provided the financial assurance under this section.

(8)(CR 01-12) **Previously Permitted Sites.** A nonmetallic mining site that becomes subject to reclamation permitting authority of the County after already being issued a reclamation permit pursuant to Chapter NR 135, Wisconsin Administrative Code shall be subject to the terms and conditions of the previously-issued permit until modified by the County pursuant to sub. 18.07(1).

(9)(CR 01-12) **Review.** Any permitting decision or action made by the County under this chapter may be reviewed as set forth in this section. Notwithstanding §§68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats., any person who meets the requirements of §227.42(1), Wis. Stats., may obtain a contested case hearing under §68.11, Wis. Stats., on the County's decision to issue, deny or modify a nonmetallic mining reclamation permit.

18.06 PUBLIC NOTICE AND RIGHT OF HEARING. (1)(CR 01-12)(AM 06-29) **When Required.** A public notice and right of public hearing are required as follows:

(a) For all new mines submitting applications under sub. 18.05(2)(b); and

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(b) For existing mines where the County requires the submittal of a new reclamation plan or significant changes to an existing, previously-approved plan.

(c) No public notice or informational hearing is required for permit applications submitted under sub. 18.05(2)(a) for local transportation-related mines.

(2)(CR 01-12)(AM 07-4) **Procedures.** The County shall provide public notice and the opportunity for a public informational hearing as set forth below:

(a) Public Notice. 1. Within 30 days after the County has received all the application materials under sub. 18.05(2), the County shall publish a class 1 public notice pursuant to §985.07(1), Wis. Stats., in the official newspaper of the County. The notice shall do all of the following:

a. Provide a brief description and location of the proposed nonmetallic mining and reclamation planned;

b. Announce the date, time and place of any scheduled zoning hearing, where the public is offered the opportunity to submit comments to the County concerning the reclamation plan. If no zoning hearing is scheduled, the notice shall explain the procedures for requesting a public hearing; and

c. Provide the location and times that the public may review the reclamation plans that have been prepared to satisfy the requirements of this chapter.

2. Copies of the notice shall be forwarded by the County to the applicable municipal zoning board, the applicable local planning organization, the County zoning administrator and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.

(b) Hearing. The County shall provide for an opportunity for a public informational hearing on an application or request to issue a reclamation permit as follows:

1. If a zoning-related hearing is conducted on the mine site, the County shall provide jointly the opportunity at this hearing for the public to present testimony on reclamation-related matters. This joint hearing shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The County shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.

2. a. If there is no opportunity for a joint reclamation and zoning-related hearing on the site as described in sub. 1., opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the mining site is located or proposed may request a public informational hearing. The

County shall hold a public informational hearing if requested by any of these persons within 30 days of the actual date of public notice under sub. (2)a. This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.

b. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

18.07 PERMIT ADMINISTRATION. (1)(CR 01- 12) **Permit Modification.** Modifications may be made to permits issued under sec. 18.05 according to the procedures set forth below.

(a) By Washington County. A nonmetallic mining reclamation permit issued under this chapter may be modified by the County if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter. An order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter.

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

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

(d) Review. All actions by the County on permit modifications requested or initiated under this section are subject to review under sub. 18.05(9).

(2)(CR 01-12) **Permit Suspension and Revocation.** A permit issued under sec. 18.05 may be suspended or revoked as set forth below.

(a) Grounds. Washington County may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds the operator has done any of the following:

1. Failed to submit a satisfactory reclamation plan within the time frames specified by the County.

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2. Failed to submit or maintain financial assurance as required by this chapter.

3. Failed on a repetitive and significant basis to follow the approved reclamation plan.

(b) Procedures. If the County finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in sub. 18.07(2), it may issue a special order suspending or revoking such permit as set forth in sub. 18.11(3).

(c) Consequences. 1. If the County makes any of the findings in sub. 18.07(2), it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the County pursuant to sub. 18.11(2) thru (7).

2. If the County makes any of the findings in sub. 18.07(2), it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to the County. The County may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation plan through private contract or force work accounts.

(3)(CR 01-12) **Permit Termination.** When the County has certified pursuant to sub. 18.10(3) that final reclamation measures have been completed according to the approved reclamation plan and all other applicable requirements of this chapter, the County shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

18.08 ANNUAL OPERATOR REPORTING. (1)(CR 01-12)(AM 07-4) **Contents and Deadline.** Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites to the County on forms provided by the County.

(a) Contents. The annual report required by this section shall include all of the following:

1. The name and mailing address of the operator.

2. The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number if available.

3. The identification number of the applicable nonmetallic mining permit, if assigned by the County.

4. The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.

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5. The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.

6. A plan map with a scale of 1 inch equals not less than 100 feet accurately showing the acreage described in subs. 4. and 5.

7. The following certification, signed by the operator:

"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Chapter NR 135, Wisconsin Administrative Code."

(b) Deadline. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31.

(c) When Reporting May End. Annual reports shall be submitted by an operator for all active and intermittent mining sites to the County for each calendar year until reclamation at the site is certified as complete pursuant to sub. 18.10(3)

(2)(CR 01-12) **Inspection in Lieu of Report.** The County may, at its discretion, obtain the information required in sub. (1)a. for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the County obtains and documents the required information, the annual report need not be submitted by the operator. If the County determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the County shall require the operator to submit the certification required in sub. 18.08(1)(a).

(3)(CR 01-12) **Retention of Annual Reports.** Annual reports or inspection records under this section shall be retained by the County for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

18.09 FEES. (1)(CR 01-12) **Plan Review Fees.** Operators shall submit plan review fees to the County as set forth below:

(a) Amount and Applicability. All permit applicants under sub. 18.05(2)(b) shall submit to the County a non-refundable plan review fee in accordance to the fee schedule established by the Land Conservation Committee through the annual County budget process. A review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to sub. 18.07(1).

(b) Expedited Plan Review Fee. Any permit applicant requesting expedited review by the County under sub. 18.05(4) shall pay the expedited review fee established by the County through the annual budget process.

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(c) Relation to Annual Fee. Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under sub. 18.09(2).

(2)(CR 01-12)(AM 06-29)(AM 07-4) **Annual Fees.** Operators shall submit annual fees to the County as set forth below:

(a) General. Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees to Washington County. Fees paid under this section shall include a share due to the Wisconsin Department of Natural Resources under sub. (3) and a share due to the County. The annual fee amount due to the County shall be established by the Land Conservation Committee through the annual County budget process, and shall reflect reasonable expenses associated with administration of this chapter. The annual fee collected by Washington County under this subsection for local transportation-related mines issued permits under sub. 18.05(2)(a) may not exceed the amounts set forth in Table 2 of Section NR 135.39 of the Wisconsin Administrative Code and shall include both a share for the Wisconsin Department of Natural Resources and Washington County.

(b) Areas Subject to Fees. Fees paid under this section shall be calculated by the County based on the unreclaimed acres of a nonmetallic mining site, as defined in sub. 18.01(11), present on a nonmetallic mining site at the end of each calendar year. For new or reopened mines that submit a reclamation permit application under sub. 18.05 (2)(b), the first year's annual fee shall be based upon the unreclaimed acres which are anticipated at the end of that calendar year. Those portions of nonmetallic mining sites covered under an approved nonmetallic mining reclamation plan but which are not yet affected by nonmetallic mining are not subject to annual fees.

(c) Procedures and Deadlines. Fees assessed pursuant to this section shall be paid to the County no later than January 31 for the previous year, except when required at the time of permit application under sub. 18.05(2).

(d) Fees Prior to Reclamation Certification. If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the County pending certification of completed reclamation pursuant to sub. 18.10(3). Upon such certification Washington County shall refund that portion of the annual fee that applies to the reclaimed areas. If the County fails to make a determination under sub. 18.10(3) within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.

(3)(CR 01-12)(AM 06-29) **Wisconsin Department of Natural Resources Share of Fee.** (a) Fees paid under sub. (2) shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in section NR 135.39(3), Wisconsin Administrative Code. For sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be \$15.00. The County shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31.

18.10 COMPLETED RECLAMATION. (1)(CR 01-12) **Reporting.** The operator of a nonmetallic mining site may report, to the County at any time completion of reclamation for a portion of or the entire nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter. Any report under this section shall be submitted on a form provided by the County.

(2)(CR 01-12) **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. Reporting of interim reclamation shall be done according to the procedures in sub. (1).

(3)(CR 01-12) **Certification of Completed Reclamation.** (a) Washington County shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted by the operator pursuant to this subsection and issue a determination in writing within 60 days of receipt of the report. The County may make a determination under this subsection that:

1. Final reclamation is not yet complete;
2. It is not possible to assess whether final reclamation is complete due to weather conditions, snow cover or other relevant factors;
3. Final reclamation is complete in a part of the mine; or
4. Final reclamation is fully complete.

(b) If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with the requirements of this chapter, the County shall issue the mine operator a written certificate of completion for the applicable area.

(4)(CR 01-12) **Effect of Completed Reclamation Certification.** If reclamation is certified by the County as complete under sub. 18.10(3) for part or all of a nonmetallic mining site, then:

(a) No future annual fee shall be assessed under sub. 18.09(2) for the area so certified.

(b) The financial assurance required by sec. 18.04 shall be released or appropriately reduced in the case of completion of final reclamation for a portion of the mining site.

(c) For sites or portions of sites which are reported as interim reclaimed under sub. 18.10(2) and so certified under sub. 18.10(3), financial assurance for reclaiming the certified area may be reduced if the County determines that the balance remaining would be sufficient to ensure final reclamation for remaining portions of the site.

(5)(CR 01-12) **Effect of Inaction Following Report of Completed Reclamation.** If within 60 days of receiving a report of completed reclamation, the County provides no written response as

required by sub. 18.10(3), any annual fee paid to the County for the applicable area under sub. 18.09(2) shall be refunded.

18.11 ENFORCEMENT. (1)(CR 01-12) **Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of this chapter, any authorized officer, agent, employee or representative of Washington County may inspect any nonmetallic mining site subject to this chapter as provided below:

(a) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of Washington County who presents appropriate credentials to inspect the site for compliance with this chapter.

(b) Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

(2)(CR 01-12) **Violations.** The following shall be considered violations of this chapter and are therefore subject to any or all of the enforcement provisions under this section.

(a) Participating in nonmetallic mining activities after August 1, 2001, without having a permit on file with the County.

(b) Failure to submit a satisfactory reclamation plan or financial assurance within the time frames specified under sub. 18.05(3)(a).

(c) Participating in nonmetallic mining activities after September 1, 2001, without a reclamation permit issued by the County under sub. 18.05(3);

(d) Failure to carry out any activity required under an approved reclamation plan or other condition of a permit issued under sub. 18.05(3);

(e) Failure to maintain compliance with the financial assurance requirements under sec. 18.04;

(f) Failure to provide the County the annual reporting information required under sub. 18.08(1);

(g) Failure to pay the County the annual fee required under sub. 18.09(2); or

(h) Failure to allow an authorized representative of the County access to the nonmetallic mining site for purposes of compliance inspection, under sub. (1).

(3)(CR 01-12) **Enforcement Orders.** The County may issue orders including an order to immediately cease all activities regulated under this chapter until full compliance with the provisions herein or of this chapter are verified by the County.

NONMETALLIC MINING RECLAMATION 18.11

(4)(CR 01-12) **Permit Suspension or Revocation.** The County may issue a special order suspending or revoking a nonmetallic mining reclamation permit pursuant to sub. 18.07(2).

(5)(CR 01-12) **Review of Orders.** A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under §68.11, Wis. Stats., notwithstanding the provisions of §§68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b), Wis. Stats.

(6)(CR 01-12) **Citations.** The County may issue a citation in accordance with the provisions provided in §66.0119, Wis. Stats. and the Washington County Code to collect forfeitures to enforce 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.

(7)(CR 01-12) **Enforcement.** Washington County may submit any order issued under this section to abate violations of this chapter to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.

(8)(CR 01-12) **Forfeiture of Financial Assurance.** The County may use the financial assurance under sec. 18.04 to ensure compliance with the reclamation plan and this chapter through private contracts or force account work.

(9)(CR 01-12) **Penalties.** Any person who violates this chapter or an order issued under this chapter may be required to forfeit not less than \$25 nor more than \$5,000 for each violation, as provided in §295.19(3), Wis. Stats. Each day of violation is a separate offense.

18.12 APPEALS. (1)(CR 01-12) **Authority.** The Board of Adjustment shall act as the review and appeal authority for any order, requirement, decision or determination made by the County under this chapter.

(2)(CR 01-12) **Procedure.** The rules, procedures, duties and powers of the Board of Adjustment as provided in §59.694, Wis. Stats., shall apply to any review or appeal under this chapter.

(3)(CR 01-12) **Variances.** Upon appeal, the Board of Adjustment may authorize variances from the provisions of this chapter which are not contrary to the public interest or the purposes of this chapter, and where owing to special conditions beyond the control of the applicant, the literal enforcement of this chapter would result in unnecessary hardship.

(4)(CR 01-12) **Who May Appeal.** Any nonmetallic mine operator or other person directly affected by a decision of the County under this chapter may appeal in accordance with this section.