

2023-03 NONMETALLIC MINING PERMIT ORDINANCE - Amended

The Town Board for the Town of New Hope ordains as follows:

Section One: Title and Purpose. Nonmetallic Mining Reclamation for the Town of New Hope.

This Ordinance is entitled "Nonmetallic Mining Permit Ordinance." The purpose of this Ordinance is to establish a local permit program to regulate nonmetallic mining and nonmetallic mining sites on which nonmetallic mining takes place in the Town of New Hope after the effective date of this ordinance. The local permit program is to provide for orderly, economic and safe removal of nonmetallic minerals and to promote the public health, safety and general welfare of the residents of the Town of New Hope.

This ordinance aligns with the Portage County Nonmetallic Mining Permit Ordinance 7.8 as defined later in this document.

Section Two: Authority.

This Ordinance is adopted under the authority granted by Section 295.14(1) of the Wisconsin State Statutes for towns, Section NR 135.32, Wisconsin Administrative Code and Section 60.22, Wisconsin Statutes.

Section Three: Adoption of Ordinance.

The Town Board of the Town of New Hope has, by adoption of this Ordinance, confirmed the authority, powers, and duties noted in this Ordinance, and has established by this Ordinance the means to regulate and control nonmetallic mining within the Town of New Hope and to accomplish the purpose set forth above.

Section Four: Coverage.

Every person, pursuant to applicable state statutes and this ordinance, doing business in the town of New Hope who engages in a nonmetallic mining operation at a nonmetallic mining site in the Town of New Hope shall seek and obtain a nonmetallic mining permit from the Town of New Hope. The fee for such permit shall be established by the Town Board of the Town of New Hope at two hundred dollars (\$200.00) per permit. The fee shall be established annually by the Town Board of the Town of New Hope prior to January of each year. The permit shall be issued from January 1 of one year to December 31 of the same year. The Town Clerk of the Town of New Hope shall issue the permit after Town Board approval prior to the person conducting and maintaining a nonmetallic mining operation at a nonmetallic mining site in the Town of New Hope.

Section Five: Application/Permit.

The application and permit shall designate the premises to be used by the permitted person for the nonmetallic mining operation. The permit may not be amended if the person changes the mining site for which the permit was issued in the Town of New Hope. The application for permit shall contain:

- a. The name of the applicant.

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- b. The address of applicant.
- c. The business and residential telephone number of applicant, if any.
- d. The required fee as set forth in this ordinance.
- e. The Operational Plan for the Nonmetallic Mining Site which shall include, but not be limited to the following information:
 - 1. An accurate legal description of the property where the nonmetallic mining will occur.
The number of acres in the proposed operation and site layout.
 - 2. A narrative outlining the type of material to be excavated, mode of operation, estimate of amount of material to be removed, number and frequency of trucks hauling per day, and other pertinent information to explain the request in detail.
 - 3. A map showing access and haul routes to be used.
 - 4. A copy of any environmental permits issued by other government agencies for the nonmetallic operation for this site.
 - 5. A plan for sanitary facilities, at a minimum a portable toilet.
 - 6. A copy of the reclamation plan as set forth by Portage County under Section 7.8.10 Standards Portage County Code of Ordinances, Nonmetallic Mining Reclamation Ordinance.
 - 7. A copy of liability insurance for the operation.
 - 8. Describe the use of explosives in the operation.
 - 9. Describe the security and physical structures of containment for the site.

Section Six: Exemptions.

Persons will be exempt from this permit requirement if they conduct in the Town of New Hope the following activities:

- a. Excavations or grading by a person solely for domestic use at his or her residence that encompasses one acre or less in size.
- b. Grading conducted for farming, preparing a construction site or restoring land following a flood or natural disaster.
- c. Excavations for building construction purposes.
- d. Any activities conducted at a solid or hazardous waste disposal facility site required to prepare, operate, or close a solid waste disposal facility, under applicable state statutes, but a nonmetallic mining reclamation ordinance may apply to activities related to solid or hazardous waste disposal which are conducted at a facility such as activities to obtain nonmetallic minerals to be used for lining, capping, covering, or constructing berms, dikes, or roads for the solid waste facility or the hazardous waste facility.

Section Seven: Ordinance/Permit.

- a. The persons subject to this ordinance shall comply with all applicable federal standards, state statutes, county ordinances and this ordinance.
- b. The Town Clerk of the Town of New Hope shall provide copies of this ordinance, at a cost set by the Town of New Hope Public Records Ordinance, to any applicant requesting copies of this ordinance.

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- c. The applicant and the person subject to this ordinance shall comply with the following:
1. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope until the appropriate fee has been paid to the Town Clerk of the Town of New Hope and all, if any, delinquent taxes or special assessments owed by the - perspective permittee or affecting the mining site have been paid to the Town of New Hope.
 2. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope who has failed to properly and fully complete and submit to the Town Clerk of the Town of New Hope the application form as developed and provided by the Town of New Hope.
 3. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope if the nonmetallic mining site will be located in any of the following areas:
 - i. Conservancy zoned land
 - ii. Residential zoned land
 - iii. Archaeological or historical site areas
 - iv. Sensitive lands
 - v. Close proximity to residences or subdivisions at the time of the original permit (Refer to Section 8(b))
 - vi. In any location which causes haul routes to be located on designated Rustic Roads in the Town of New Hope
 4. No person shall be issued or re-issued a nonmetallic mining permit in the Town of New Hope if the applicant for the nonmetallic mining permit:
 - i. Fails to develop and submit to the Town Board of the Town of New Hope a nonmetallic mining operation plan as specified in Section 5 (e) and fails upon operation to comply with the plan.
 - ii. Fails to meet federal, state and/or county regulations governing operations at their nonmetallic mining site in the Town of New Hope.
 - iii. Fails to comply with the operational hours for operation of the nonmetallic mining site. (Refer to Section 8(d).)
 - iv. Fails to install and maintain a gate at each entrance and exit of the nonmetallic mining site accessing town roads or county or state highways to prevent trespassing.
 - v. Fails to provide adequate sanitary facilities at the nonmetallic mining site, at a minimum, portable toilets, and fails to keep the nonmetallic mining site free of trash, noxious weeds, and other debris during and after daily operations at the nonmetallic mining site.
 - vi. Fails to respond to specific questions by the Town Board based on concerns of possible ordinance violations.
 - vii. Fails to comply with the Town of New Hope Ordinances and Land Use Plan.

Section Eight: Other Provisions.

Any permit granted hereunder shall be subject to the following conditions:

- a. No nonmetallic mining site (acres open and utilized at any one time) greater than 5 acres in size or in conflict with the existing Land Use Plan in the Town of New Hope. Larger sites will require a public hearing and Town Board approval.

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- b. No nonmetallic mining site (includes mining, stockpiling or land disturbance) shall take place within the following safety setbacks:
 - i. 100 feet of adjoining property lines.
 - ii. 750 feet of any existing structures intended for human habitation, not owned by the permittee.
 - iii. 100 feet of any road right-of-way of any existing road.
 - iv. Less restrictive setbacks may be used if an agreement is reached between the permittee and the adjoining property owner.
- c. No vehicle entering or leaving the nonmetallic mining site shall violate any road weight limits set by the Town of New Hope as per Wisconsin State Statute 349.16. A bond of \$ 100,000 per mile of town road utilized by nonmetallic mining site traffic must be submitted to the Town Clerk before any permit is granted to ensure the quality of the road is maintained. An agreement must be reached with the Town of New Hope regarding the maintenance and repair of town roads used as a haul route. Such agreement shall pertain to improvements, repairs and maintenance of any town roads before, during or after project completion to be used for a haul route. Such agreement shall take into account the dust from additional truck traffic, road design as specified in Wisconsin Department of Transportation Chapter 204 Existing Town Road Improvement Standards, existing usage of the town road, location and number of residents along the haul route.
- d. No vehicles or equipment utilized for nonmetallic mining shall be operated by the permittee or the permittee's agents or employees in or adjacent to the nonmetallic mining site during the following times: between 6 p.m. and 7 a.m. Monday through Friday and all hours during Saturday and Sunday. Any exceptions in hours will be reviewed case by case.

Section Nine: Penalty.

- a. The penalty for violating the terms of this ordinance shall be \$200 per day for each day a violation occurs. Each day of continued violation is a separate offense.
- b. In addition, in the event of a violation of this ordinance, the town board may take appropriate action to enforce this ordinance, including action to terminate or modify licensed, application for injunctive relief, action to compel performance, or other court action, to prevent, restrain, correct or abate such violation(s). To the extent legally permissible, the court may award costs, disbursements and reasonable attorneys' fees required in enforcing this ordinance.

Section Ten: Definitions.

- a. "Nonmetallic mining" means all of the following: 1) operations or activities for the extraction from the earth for sale or use by the permittee of mineral aggregates or nonmetallic minerals such as stone, sand, gravel, asbestos, beryl, clay, feldspar, peat, talc and topsoil, including such operations or activities as excavation, grading and dredging; 2) on site processes that are related to the extraction of mineral aggregates or nonmetallic minerals, such as stockpiling minerals, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, crushing, screening, scalping and dewatering.

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- b. "Permittee" 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.
- c. "Sensitive lands" means lands recommended to remain in their natural state or for non-intensive uses such as recreation, wildlife habitat and forest management. This category applies to lands, which are environmentally important or sensitive, including shore lands, wetlands, floodplains, steep slopes and public resource areas.
- d. All definitions set forth in Wisconsin Statute Section 295 shall apply to this Ordinance.

Section Eleven: Severability.

If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section Twelve: Effective Date.

This Ordinance shall be effective after adoption by the Town Board and publication or posting as provided by law.

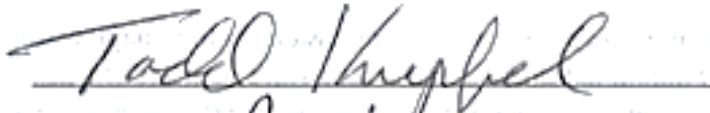
Amended Ordinance Approved: April 18, 2024

Posted: April 19, 2024

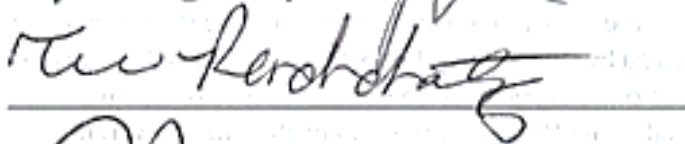
Effective: April 19, 2024

Signatures of Town Board:

Clerk Todd Knepfel
Town Chairperson



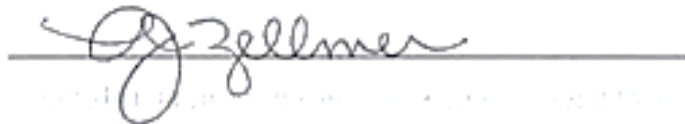
Tim Raddatz
Town Supervisor



Ray Reser
Town Supervisor



Attest: Pat Zellmer
Town Clerk



PORTAGE COUNTY LAND AND WATER CONSERVATION DIVISION, PORTAGE COUNTY, WISCONSIN
<https://www.co.portage.wi.gov/361/Land-Water-Conservation>

PORTAGE COUNTY NONMETALLIC MINING PERMIT ORDINANCE 7.8

Sec. 7.8. Nonmetallic Mining Reclamation.

PART I—GENERAL

7.8.1 Title.

Nonmetallic Mining Reclamation Ordinance for Portage County.

7.8.2 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 after the effective date of this chapter, in compliance with Wis. Admin. Code ch. NR 135, and Wis. Stats. ch. 295, subch. I. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

7.8.3 Statutory Authority.

This chapter is adopted under authority of Portage County Wis. Stats. § 295.13(1); Wis. Admin. Code § NR 135.32; Wis. Stats. § 59.51.

7.8.4 Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Wis. Admin. Code ch. NR 135 and Wis. Stats. ch. 295, subch. I. 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 Wis. Admin. Code ch. NR 135, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Wis. Admin. Code ch. NR 135.

7.8.5 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.

7.8.6 Definitions.

All definitions for the purposes of this chapter are those contained in Wis. Admin. Code Section NR 135.03.

- 1) *Alternative requirement* means an alternative to the reclamation standards of this chapter provided through a written authorization granted pursuant to Portage County Nonmetallic Mining Reclamation Ordinance section 7.8.17.
- 2) *Applicable reclamation ordinance* a nonmetallic mining reclamation ordinance including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Wis. Admin. Code ch. NR 135, and Wis. Stats. ch. 295, subch. I.

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- 3) *Borrow site* 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"* the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.
- 5) *Department* the Wisconsin Department of Natural Resources.
- 6) *Environmental pollution* has the meaning in Wis. Stats. § 295.11(2).
- 7) *Existing mine* means a nonmetallic mine where nonmetallic mining takes place before August 1, 2001.
- 8) *Financial assurance* means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in section 7.8.13 and is sufficient to pay for reclamation activities required by this chapter.
- 9) *Highwall* means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds 3:1 (Three feet horizontal to one foot vertical).
- 10) *Landowner* 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.
- 11) *Licensed professional geologist* means a person who is licensed as a professional geologist pursuant to Wis. Stats. ch. 47.
- 12) *Municipality* any city, town, village, county.
- 13) *Nonmetallic mineral* 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.
- 14) *Nonmetallic mining or mining* means all of the 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.
- 15) *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,

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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.

- 16) *Nonmetallic mining refuse waste* means 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.
- 17) *Nonmetallic mining site or site* means all contiguous areas of present or proposed mining described in paragraph (a), subject to the qualifications in paragraph (b).
1. 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.
 2. Nonmetallic mine site does not include any of the following areas:
 1. Those portions of sites listed in paragraph (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.
- 18) *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.
- 19) *Person* means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.
- 20) *Registered professional engineer* means a person who is registered as a professional engineer pursuant to Wis. Stats. §§ 443.04 and 443.09.
- 21) *Regulatory authority* means the following:
 - a) Portage County Planning and Zoning for nonmetallic mine sites located within its jurisdiction, or
 - b) A municipality in Portage County which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under Wis. Stats. § 295.14.
- 22) *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 reclamation for the

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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.

- 23) *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 Wis. Stats. ch. 283, or source material, special nuclear material or by-product material, as defined in Wis. Stats. § 254.31(1).
- 24) *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.
- 25) *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.
- 26) (a) "Unreclaimed acre" or "unreclaimed acres" 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 subparagraph 7.8.3. However the term does not include any areas described in paragraph (b).
- (b) "Unreclaimed acre" or "unreclaimed acres" do not include:
1. Those areas where reclamation has been completed and certified as reclaimed under subparagraph 7.8.28(3).
 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 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 section 7.8.26, those areas within a nonmetallic mining site which has determined to have been successfully reclaimed on an interim basis in accordance with subparagraph 7.8.28(3).

7.8.7 Applicability.

- 1) *Overall Applicability.* The requirements of this chapter apply to all operators of nonmetallic mining sites operating on or commencing to operate after August 1, 2001 and as provided in Wis. Admin. Code Sections NR 135.02(1) and (2), except where exempted in subparagraph 7.8.7(2) and except for nonmetallic mining sites located in a city, village or town that has adopted an ordinance pursuant to Wis. Admin. Code Section NR 135.32(2) and Wis. Stats. § 295.14.
- 2) *Exemptions.* This chapter does not apply to the following activities:

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- a) 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 Wis. Stats. §§ 30.19, 30.195 or 30.20, and complies with Wis. Admin. Code ch. NR 340.
- b) Excavations subject to the permit and reclamation requirements of Wis. Stats. §§ 30.30 or 30.31.
- c) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- d) 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. (
- e) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster back to its previous condition.
- f) Excavations for building construction purposes conducted on the building site.
- g) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total area over the life of the mine.
- h) Any mining operation, the reclamation of which is required in a permit obtained under Wis. Stats. ch. 293.
- i) Any activities required to prepare, operate or close a solid waste disposal facility under Wis. Stats. ch. 289, or a hazardous waste disposal facility under Wis. Stats. ch. 291, 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.
- j)
 1. 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.
 2. 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.
 3. If a nonmetallic mining site covered under paragraphs 1. and 2. 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.
- k) 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

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7.8.8 Administration.

The provisions of this chapter shall be administered by the Portage County Planning and Zoning Department.

7.8.8 Effective Date.

The provisions of this chapter shall take effect on June 1, 2001.

PART II—STANDARDS

7.8.9 Standards.

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

1) *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 rules of the Wisconsin Department of Natural Resources adopted pursuant to Wis. Stats. ch. 289 and 291.
- (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 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.
- (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) *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 Wis. Admin. Code ch. NR 102 to NR 105. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

3) *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 Wis. Admin. Code ch. NR 140, to be exceeded at a point of standards application defined in that chapter.

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4) *Topsoil Management.*

(a) *Removal.* Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan in order to achieve reclamation to the approved post-mining land use. Removal of on-site topsoil and topsoil substitute material removal, 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.

5) *Final Grading and Slopes.*

1) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to 7.8.12, 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 (three feet horizontal to one foot vertical) slope, whether or not graded, as stable and safe.

b) 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.

c) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

d) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 (three feet horizontal to one foot vertical), unless found acceptable through one or more of the following: alternative requirements are approved under 7.8.17; 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.

e) 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 six feet below the lowest seasonal water level.

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A slope no steeper than 3:1(three feet horizontal to one foot vertical) shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

- 6) *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 distribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.
- 7) *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.
- 8) *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:
 1. On-site inspections.
 2. 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
 3. 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:
 1. Comparison to an appropriate reference area;
 2. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or 3. Comparison to an approved alternate technical standard.
 3. Revegetation using a variety of plants indigenous to the area is favored
- 9) *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 Section 7.8.13 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

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- 10) *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

7.8.11 Nonmetallic Mining Reclamation Permit Application.

- 1) *Required Submittal.* The operator of all nonmetallic mining sites that operate on or after August 1, 2001 shall apply for a reclamation permit. All reclamation permit applications under this section shall be accompanied by the following information:
- (a) Brief description of the general location and nature of the nonmetallic mine.
 - (b) Legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
 - (c) The names, addresses and telephone numbers of all persons or organizations who are owners, lesser or operators of the property on which the nonmetallic mining site is located.
 - (d) Certification by the operator of their intent to comply with the statewide nonmetallic mining standards established in 7.8 Part II Standards.
- 2) *New Mines.* The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1, 2001 or which has not applied for an automatic reclamation permit shall submit an application that meets the following requirements:
- (a) Information listed in subparagraph 7.8.11(1).
 - (b) Plan review and annual fees.
 - (c) Reclamation Plan.
 - (d) Certification that the operator will provide as a condition of the reclamation permit, financial assurance as required upon granting the reclamation permit and before mining begins.

7.8.12 I. Reclamation Plan.

- 1) *Reclamation Plan Requirements.* All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of Wis. Admin. Code Section NR 135.19 and this chapter.
- (a) *Site Information.* The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, by but not limited to:
- 1. Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage patterns, the approximate elevation of ground water as determined by existing

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hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement such information with the opinion of a licensed professional geologist or hydrologist.

Note: 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 of the University of Wisconsin Soil Science Extension Agent or other available information resources.

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

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 7.8.10
2. 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.

Note: Safety measures include: visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer

- 2) *Existing Plans and Approvals.* To avoid duplication of effort, the reclamation plan required by subparagraph 7.8.12(1) may, by reference, incorporate existing plans or materials that meet the requirements of this chapter. Previous approvals for nonmetallic mining sites that apply in accordance with subparagraph 7.8.11(2) shall satisfy the requirements of subparagraph 7.8.12(1) if they meet the requirements of Wis. Admin. Code Section NR 135.21(1).
- 3) *Approval of Reclamation Plan.* Reclamation plans submitted under this section shall be approved, conditionally approved or denied in writing as part of permit issuance process pursuant to subparagraph 7.8.15(2) for existing mines and subparagraph 7.8.15(4) for new mines. Conditional approvals of reclamation plans shall be made according to subparagraph 7.8.15(7), and denials of reclamation plans made according to section 7.8.16.

7.8.13 Financial Assurance.

- 1) *Financial Assurance Requirements.* All operators of nonmetallic mining sites shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Wis. Admin. Code Section 135.40 and this section. NR 135.40 states "The amount of financial assurance shall equal as closely as possible the cost to the regulatory authority of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the regulatory authority to assure it equals outstanding reclamation costs. Any financial assurance filed with the regulatory authority shall be in an amount equal to the estimated cost to the regulatory authority for reclaiming all sites the operator has under project permits. The regulatory authority may accept a lesser initial amount of financial assurance provided that the permittee

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initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the mine reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.”

- 2) *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, or a municipality.

7.8.14 Public Notice and Right of Hearing.

- 1) *New Mines.* Portage County shall, except as provided in subparagraph 7.8.14(2), provide public notice and the opportunity for a public informational hearing as set forth below:

a) Public Notice.

1. Except as provided in subparagraph 7.8.14.2 for existing mines, when a complete nonmetallic mining reclamation permit application that satisfies subparagraph 7.8.11(2) is received by Portage County, a public notice of the application shall be published no later than 30 days after receipt of a complete application.
2. The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a class 1 notice pursuant to Wis. Stats. § 985.07(2), in the official newspaper. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.
3. Copies of the notice shall be forwarded to owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located.
 1. *Hearing.* Except as provided in subparagraph 7.8.14(2)(c) for existing mines, an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit shall be provided as follows.
 1. If Portage County conducts a zoning-related hearing on the nonmetallic mine site, an opportunity shall be provided at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. Reclamation-related testimony in the zoning-related hearing shall be considered in deciding on a permit application pursuant to this chapter.
 2. a. If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in paragraph 7.8.14.1(b), 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 nonmetallic mining site is located or proposed may request a public informational hearing. A public hearing shall be held if requested by any of these persons within 30 days of the actual date of public notice under subparagraph (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

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hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation.

2. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.
2. *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 subparagraph 7.8.15(5).

7.8.15 Issuance of a Nonmetallic Mining Reclamation Permit.

- a) *Permit Required.* Every operator of a nonmetallic mining site who engages in or plans to engage in nonmetallic mining after August 1, 2001 shall obtain a reclamation permit issued under this section, except nonmetallic mining sites exempt from this chapter as provided in subparagraph 7.8.7(2). No person may engage in nonmetallic mining or nonmetallic mining reclamation after August 1, 2001 (per 7.8.7(1) without a reclamation permit issued pursuant to this chapter.
- b) *Permit Issuance for New Mines.* Applications for reclamation permits for nonmetallic mining sites not permitted under subparagraph 7.8.15(2) that satisfy subparagraph 7.8.11(2) shall be issued or otherwise acted on as provided in Wis. Admin. Code Section NR 135.21(2). The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with subparagraph 7.8.12(3), and provision by the applicant of financial assurance that conforms with subparagraph 7.8.13(3) prior to beginning mining.
- c) *Automatic Permit for Local Transportation-Related Mines.* An automatic permit shall be issued under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Wis. Admin. Code Section NR 135.23(1)(a). This automatic permit shall be issued according to the provisions of Wis. Admin. Code Sections NR 135.23(1)(b) through (j).
- d) *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 Section 7.8.25.2. The expedited review shall be carried out according to the provisions of Wis. Admin. Code Section NR 135.23(2). Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to section 7.8.14.
- e) *Permit Conditions.* Permits issued under this section may include conditions as provided in Wis. Admin. Code Section NR 135.21(2). One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to 7.8.13.

7.8.16 Permit Denial.

An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Wis. Admin. Code Section NR 135.22, exist.

1. An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in section 7.8.15, if it finds any of the following is found:
 - a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by Wis. Admin. Code Chapter NR 135, and this chapter.

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- b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this chapter, Wis. Admin. Code Chapter NR 135, or Wis. Stats. ch. 295, subch. 1.
- c)
 - 1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within ten 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.
 - 2. The following may be considered in making this determination of a pattern of serious violations:
 - a. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.
 - b. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Wis. Admin. Code ch. NR 135.
 - c. Forfeitures of financial assurance.
 - d. A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.
- 2. A decision to deny an application to issue a reclamation permit may be reviewed under section 7.8.21.

7.8.17 Alternative Requirements.

- 1) *Scope of Alternative Requirements Approvable.* An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in section 7.8.10. Such a request may be made only on the basis of the criteria set forth in Wis. Admin. Code Section NR 135.26(1).
- 2) *Procedures.* The operator of a nonmetallic mining site requesting an alternate requirement in subparagraph 7.8.17(1) shall demonstrate all the criteria in Wis. Admin. Code Section NR 135.26(1). This shall be submitted in writing to the Portage County Planning and Zoning Department.
- 3) *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.
- 4) *Notice to Wisconsin Department of Natural Resources.* Notice shall be provided to the Wisconsin Department of Natural Resources as provided in Wis. Admin. Code Section NR 135.26(3)(a).

7.8.18 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 subparagraph 7.8.31(2), or as limited under Wis. Admin. Code Section NR 135.27, where the mine operator is not the landowner.

7.8.19 Permit Transfer.

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A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the conditions in Wis. Admin. Code Section NR 135.28.

7.8.20 Previously Permitted Sites.

For any nonmetallic mining site which had a reclamation permit previously issued pursuant to Wis. Admin. Code ch. NR 135, that becomes subject to reclamation permitting authority by the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified pursuant to subparagraph 7.8.22(1).

7.8.21 Review.

Any permitting decision or action made under this chapter may be reviewed as set forth in Wis. Admin. Code Section NR 135.30.

PART IV—ADMINISTRATION

7.8.22 Permit Modification.

- 1) *By Portage County.* A nonmetallic mining reclamation permit issued under this chapter may be modified if found 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 section 7.8.31 and as provided in Wis. Admin. Code Section NR 135.24(1).
- 2) *At the Operator's Option.* If the 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. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.
- 3) *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 Wis. Admin. Code Section NR 135.27. Such application for permit modification shall be acted on using the standards and procedures of this chapter.
- 4) *Review.* All actions on permit modifications requested or initiated under this section are subject to review under section 7.8.21.

7.8.23 Permit Suspension or Revocation.

- 1) *Grounds.* A suspension or revocation of a nonmetallic mining reclamation permit can be issued pursuant to this chapter will occur if Portage County finds the operator has done any of the following:
 - a) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
 - b) Failed to submit or maintain financial assurance as required by this chapter.
 - c) Failed on a repetitive and significant basis to follow the approved reclamation plan.
- 2) *Procedures.* If Portage County finds that the grounds for suspension or revocation of a nonmetallic mining reclamation permit set forth in subparagraph 7.8.23(1) have been met, it may issue a special order suspending or revoking such permit as set forth in subparagraph 7.8.31(2).

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3) *Consequences.*

- a) If Portage County makes any of the findings in subparagraph 7.8.23(1), it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operation may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to section 7.8.31.
- b) If Portage County makes any of the findings in subparagraph 7.8.23(1), 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. The County may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

7.8.24 Annual Operator Reporting.

- 1) *Contents and Deadline.* Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Wis. Admin. Code Section NR 135.36. These reports shall be for reclamation during a calendar year, and submitted in writing within 60 days of the end of each calendar year. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under subparagraph 7.8.28(3).
- 2) *Inspection in Lieu of Report.* An inspection may be done to obtain the information required in subparagraph 7.8.24(1) by written documentation of an inspection completed during a calendar year, as set forth in Wis. Admin. Code Section NR 135.36(4).
- 3) *Retention of Annual Reports.* Annual reports submitted under this section or inspection records that replace them shall be retained for at least ten years after the calendar year. 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 Wis. Admin. Code Chapter NR 135.

7.8.25 Plan Review Fees.

See attached fee schedule.

- 1) *Amount and Applicability.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subparagraph 7.8.11(32) shall submit a non-refundable plan review fee as set by the Planning and Zoning Committee. No plan review fee may be assessed under this section for any nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of subparagraph 7.8.11(2) or for any local transportation-related mine issued an automatic permit under subparagraph 7.8.15(5). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Section 7.8.22. The plan modification review fee shall be 50% of the plan review fee or expedited fee based on the applicant's request.
- 2) *Expedited Plan Review Fee.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subparagraph 7.8.11(32) may obtain expedited reclamation plan review by paying double the regular fee. Such fee shall be in addition to that required in subparagraph 7.8.25(1).
- 3) *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 section 7.8.26.

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7.8.26 Annual Fees.

Fee Schedule
Nonmetallic Mining

Portage County Reclamation Plan Review Fee		
Proposed Mine Site Size	Plan Review Fee	Expedited Fee
1 to < 25 acres	\$400.00	\$800.00
> 25 acres	\$800.00	\$1,600.00

*Pursuant to 7.8.25.1 The plan modification review fee shall be 50% of the plan review fee or expedited fee based on the applicant's request.

Portage County Annual Fee			
Mine Size in Unreclaimed Acres	Annual Fee	County Share	DNR Share
1 to < 5 acres	\$110.00	\$75.00	\$35.00
5 to < 10 acres	\$220.00	\$150.00	\$70.00
10 to < 15 acres	\$330.00	\$225.00	\$105.00
15 to < 25 acres	\$440.00	\$300.00	\$140.00
25 to < 50 acres	\$540.00	\$380.00	\$160.00
50 > acres	\$550.00	\$375.00	\$175.00

Inactive Site Fee	Annual Fee	County Share	DNR Share
	\$50.00	\$35.00	\$15.00

Table 2 NR 135.39 (4)(2)(c)

Unreclaimed Acres	Annual Fee	County Share	DNR Share
1 to 5 acres, does not include under 1 acre	\$175	\$140	\$35
6 to 10 acres	\$350	\$280	\$70
11 to 15 acres	\$525	\$420	\$105
16 to 25 acres	\$700	\$560	\$140
26 to 50 acres	\$810	\$650	\$160
51 acres or larger	\$870	\$695	\$175

- 1) Areas Subject to Fees, Procedures and Deadlines. Annual fees apply to operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under subparagraph 7.8.26(2) and a share for Portage County under subparagraph 7.8.26(3) that equals as closely as possible the costs of examination and approval on nonmetallic mining reclamation plans and the inspection of nonmetallic mining reclamation sites. These fees shall be calculated based on the amount of unreclaimed acres of each site, as defined in Wis. Admin. Code Section NR 135.39(1), and according to its provisions. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under section 7.8.28. Fees shall be paid no later than January 31 before the year for which they apply pursuant to NR 135.39(2)(b) Wisconsin Administrative Code.
- 2) Wisconsin Department of Natural Resources Share of Fees. Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Wis. Admin. Code Section NR 135.39(3). 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.

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- 3) County Fee. Fees paid under this section shall also include an annual fee due which shall be determined on an annual basis by the Planning and Zoning Committee to be established on an unreclaimed acre basis, and equal as closely as possible the County cost of administering the reclamation program.
- 4) Reduced Fee of Inactive Mines. Any site on which no nonmetallic activity has taken place in a calendar year shall be assessed a fee for the following calendar year of \$50.00.

7.8.27 Regulatory Reporting and Documentation.

- 1) Reporting. An annual report shall be sent to the Wisconsin Department of Natural Resources by March 31 for the previous calendar year including the information required by Wis. Admin. Code Section NR 135.37.
- 2) Documentation. Information shall be maintained as set forth in Wis. Admin. Code Section NR 135.47(3), and made it available to the Wisconsin Department of Natural Resources for that agency's audit of the reclamation program pursuant to Wis. Admin. Code Section NR 135.47.

7.8.28 Completed Reclamation—Reporting, Certification and Effect.

- 1) *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 Wis. Admin. Code Chapter NR 135.
- 2) *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 Wis. Admin. Code Chapter NR 135. Reporting of interim reclamation shall be done according to the procedures in subparagraph 7.8.28(1).
- 3) *Certification of Completed Reclamation.* An inspection of a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection will be completed within 60 days of receipt, and a determination made in writing in accordance with Wis. Admin. Code Section NR 135.40(7)(c). If it is determined that interim or final reclamation is complete, including revegetation as specified in a plan that conforms with section 7.8.12, Portage County shall issue the mine operator a written certificate of completion.
- 4) Effect of Completed Reclamation. If reclamation is certified as complete under subparagraph 7.8.28(3) for part or all of a nonmetallic mining site, then:
 - (a) No fee shall be assessed under section 7.8.26 for the area so certified.
 - (b) The financial assurance required by section 7.8.13 shall be released.
- 5) Effect of Inaction Following Report of Completed Reclamation. If no written response as required by subparagraph 7.8.28(3) 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 under section 7.8.26 shall be refunded.

7.8.29 Permit Termination.

When all final reclamation required by a reclamation plan conforming to section 7.8.12 and required by this chapter is certified as complete pursuant to section 7.8.27, a written statement shall be sent to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

PART V—ENFORCEMENT

7.8.30 Right of Entry and Inspection.

For the purpose of ascertaining compliance with the provisions of Wis. Admin. Code Chapter NR 135 and Wis. Stats. Ch. 295, subch. I, or this chapter, any authorized officer, agent, employee or representative of Portage County, who presents appropriate credentials, may inspect any nonmetallic mining site subject to this chapter as provided in Wis. Stats. § 295.17(1), and Wis. Admin. Code Section NR 135.42.

7.8.31 Orders and Citations.

- 1) *Enforcement Orders.* Orders may be issued as set forth in Wis. Stats. § 295.19(1)(a), to enforce Wis. Stats. ch. 295, subch. I, Wis. Admin. Code Chapter NR 135, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by section 7.8.12 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 section 7.8.12 and a permit issued under this chapter shall be considered a violation of Wis. Stats. ch. 295, subch. I, and Wis. Admin. Code Chapter NR 135.
- 2) *Special Orders.* Orders may be issued as a special order as set forth in Wis. Stats. § 295.19(1)(b) and (c), suspending or revoking a nonmetallic mining reclamation permit pursuant to section 7.8.23, or directing an operator to immediately cease an activity regulated under Wis. Stats. ch. 295, subch. I, Wis. Admin. Code Chapter NR 135, or this chapter until the necessary plan approval is obtained.
- 3) *Review of Orders.* An order issued under subparagraph 7.8.31(1) or subparagraph 7.8.31(2) may be reviewed as provided in Wis. Admin. Code Section NR 135.43(2).
- 4) *Citations.* Citations may be issued under s. 66.119, Wisconsin Statutes. and Portage County Ordinance 5.1 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 Section 7.8.12 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.
- 5) *Enforcement.* Requests for enforcement action shall be submitted for any order issued under section 7.8.31 to the corporation counsel enforcement as provided in Wis. Stats. § 295.19(1)(d).

7.8.32 Penalties.

Any person, firm, company, corporation, agent, contractor or subcontractor who violates any terms of this section shall be subject to a forfeiture of not less than \$25.00, nor more than \$1,000.00, together with the costs of any enforcement action. Each day of violation shall constitute a separate offense. The court may utilize any lawful authority to compel enforcement of this section, including contempt. Compliance therewith may be enforced by injunctive relief at the suit of the County or the owner or owners of land affected by the regulations of this section. (Ord. of 5-15-2001, eff. 6-1-2001; Ord. of 1-16-2007, DRAFT Update 11-17-2023).