

ARTICLE V. NONMETALLIC MINING RECLAMATION ORDINANCE

for

VERNON COUNTY, WISCONSIN

TABLE OF CONTENTS

GENERAL PROVISIONS

Section 22-221	Purpose	Page 1
Section 22-222	Statutory authority	Page 1
Section 22-223	Restrictions adopted under other authority	Page 1
Section 22-224	Interpretation	Page 1
	Severability	
Section 22-225	Applicability	Page 1
	Generally	
	Exemptions	
Section 22-226	Administration	Page 4
Section 22-227	Definitions	Page 4

STANDARDS

Section 22-228	Standards	Page 8
----------------	-----------	--------

PERMITTING

Section 22-229	Permit Application	Page 10
Section 22-230	Reclamation plan	Page 13
Section 22-231	Financial Assurance	Page 15
Section 22-232	Public notice and right of hearing	Page 18
Section 22-233	Issuance of a Nonmetallic Mining Reclamation Permit	Page 19
	Permit Required	
	New Mines	
	Automatic permit for local transportation related mines	
	Expedited review	
	Permit Conditions	
Section 22-234	Permit denial	Page 22
Section 22-235	Alternative requirements	Page 22
	Criteria	
	Procedures	
	Transmittal of decision	
	Notice to state department of natural resources	
Section 22-236	Permit Duration	Page 23
Section 22-237	Permit transfer	Page 23
Section 22-238	Previously permitted sites	Page 24
Section 22-239	Review	Page 24

ADMINISTRATION

Section 22-240	Permit modifications	Page 24
	Order of the county	
	Operator's request	
	Occurrence of changes	
	Review	

Section 22-241	Permit suspension and revocation Grounds Procedures Consequences	Page 25
Section 22-242	Annual Operator reporting Contents and deadline Inspection in lieu of report Retention period	Page 25
Section 22-243	Plan review fees Amount and applicability Expedited reclamation plan review fee Relation to annual fee Plan modification review fee	Page 26
Section 22-244	Annual Fees Applicability, procedures and deadline. Areas Subject to Fees, Procedures, Deadline and Amount State department of natural resources' share Table 1. Wisconsin Department of Natural Resources' Share of Annual Fees Collected by Vernon County County's share Automatically Permitted Local Transportation Project Related Mines Table 2. Limit on Total Annual Fees for Automatically Permitted Local Transportation Project Related Mines Documentation of county's share Table 3. Annual Fees Due Where the Department of Natural Resources is the Regulatory Authority	Page 27
Section 22-245	Regulatory reporting and documentation Annual report Documentation	Page 30
Section 22-246	Completed Reclamation - Reporting, Certification and Effect Certification of completion Report of interim reclamation Inspection Effect of completed reclamation Effect of inaction following report of completed reclamation	Page 31
Section 22-247	Permit termination	Page 32
ENFORCEMENT		
Section 22-248	Right of entry and inspection	Page 32
Section 22-249	Orders and citations Enforcement orders Special orders Review of orders Citations Enforcement	Page 32
Section 22-250	Violations; penalties	Page 33

APPENDIX

VERNON COUNTY NONMETALLIC MINING RECLAMATION ORDINANCE

Sec. 22-221 **Purpose.**

The purpose of this article is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Vernon County after the effective date of the ordinance from which this article is derived, in compliance with Wis. Admin. Code NR ch. 135 and Wis. Stats. ch. 295, subch. I. This ordinance also seeks to ensure the health and safety of all Vernon County residents by making sure that after mining ceases, land where mining has occurred is not left in a condition that constitutes a blighting effect upon neighboring properties, nor an element leading to a progressive deterioration and downgrading of neighboring properties with an accompanying diminution of property values.

(Ord. of 2-27-2003, § 2)

Sec. 22-222. **Statutory authority.**

This article is adopted under authority of Wis. Stats. §§ 295.13(1) and 59.51.

(Ord. of 2-27-2003, § 3)

Sec. 22-223. **Restrictions adopted under other authority.**

The purpose of this article is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by Wis. Stats. § 295.12(1)(a), and contained in Wis. Admin. Code NR ch. 135. It is not intended that this article repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other state law.

(Ord. of 2-27-2003, § 4)

Sec. 22-224. **Interpretation.**

In their interpretation and application, the provisions of this article 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 statutes outside the reclamation requirements for nonmetallic mining sites required by Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.) and Wis. Admin. Code NR ch. 135. Where any terms or requirements of this article may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this article is required by statute, or by a standard in Wis. Admin. Code NR ch. 135, and where the provision is unclear, the provision shall be interpreted by the Regulatory Authority to be consistent with the statute and the provisions of Wis. Admin. Code NR ch. 135.

(Ord. of 2-27-2003, § 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.

Sec. 22-225. **Applicability.**

(a) *Generally.* The requirements of this article apply to all operators of nonmetallic mining sites within Vernon County, except as exempted in subsection (b) of this section, and for nonmetallic mining sites located in a city, village or town within the county that has adopted an ordinance pursuant to Wis. Stats. § 295.14 and Wis. Admin. Code NR § 135.32(2). This article does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This article applies to nonmetallic mining conducted by, or on

behalf of, the state or a municipality, or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in section 22-231(d).

Compliance with this ordinance shall not constitute a defense against the violation of any provisions of any other ordinance for Vernon County, nor shall compliance with any provision of this ordinance relieve any person, individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency owner, or landowner from complying with any such other provision.

(b) *Exemptions.* This article does not apply to the following activities:

- (1) Nonmetallic mining at a site, or that portion thereof, that is subject to permit and reclamation requirements of the state department of natural resources under Wis. Stats. § 30.19, 30.195 or 30.20, and complies with Wis. Admin. Code NR ch. 340.
- (2) Excavations subject to the permit and reclamation requirements of Wis. Stats. § 30.30 or 30.31.
- (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (4) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- (5) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- (6) Excavations for building construction purposes conducted on the building site, if all of the following apply:
 - a. The landowner is requesting the exemption. An operator may not request the exemption.
 - b. Proof (i.e., a building permit or construction plans) is presented to the regulatory authority before excavation begins as evidence of the intent to construct a building.
 - c. Construction of the building begins within 30 days of the initial site disturbance or within 30 days of the date the building permit is issued, whichever is sooner.
 - d. Reasonable progress toward completion of the building continues throughout construction.
 - e. All material removed from the building site prior to, during and after construction is of an incidental amount and value. Proof of the dollar value of removed materials rests with the person requesting the exemption, and must be provided to the Regulatory Authority. Removal from the site of any material that could be classified as a nonmetallic mineral, such as those defined in section 22-227, may cause the site to be considered a nonmetallic mine.
 - f. The construction period, if this exemption is found applicable, shall not exceed 12 months from the date of initial site disturbance or the date the building permit was issued, whichever is longer.

- (7) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total area over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under Wis. Stats. ch. 293.
- (9) 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 article 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.
- (10) a. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport or any other transportation facility, or part thereof, if the nonmetallic mining is subject to the requirements of the state department of transportation concerning the restoration of the nonmetallic mining site.
- b. This exemption only applies to a nonmetallic mining operation with limited purpose and duration, where the state department of transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with such requirements. The duration of the exemption shall be specific to the length of the state department of transportation's contract for construction of a specific transportation project.
- c. If a nonmetallic mining site covered under subsections (10)a. and (10)b. of this section is used to concurrently supply materials for projects unrelated to the state department of transportation's project, the exemption in this subsection (10) still applies, provided that the site is fully reclaimed under a state department of transportation contract and supervision. In order to verify the exemption criteria in subsections (10)a. and (10)b are met, the operator shall provide the Vernon County Land and Water Conservation Department documentation of the following, prior to the exemption being allowed:
1. The transportation project for which the exemption for the site is being claimed, including the length of time expected for the project to last, and the date final reclamation of the site is anticipated to occur.
 2. The site where the exemption is being claimed has a limited purpose and duration consistent with the identified state department of transportation construction project.
 3. The nonmetallic mining site where the exemption is being claimed is subject to the requirements of the state department of transportation concerning the restoration of the nonmetallic mining site.
 4. The state department of transportation will actively impose nonmetallic mining reclamation requirements for the site once the transportation project has ended.
 5. The operator of the nonmetallic mining site will reclaim the site in accordance with the state department of transportation requirements as soon as the transportation project has ended.

(11) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from such activities.

(12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under Wis. Stats. § 30.21.
(Ord. of 2-27-2003, § 7)

Sec. 22-226.

Administration.

The provisions of this article shall be administered by the Vernon County Land and Water Conservation Department.

(Ord. of 2-27-2003, § 8)

Cross references: Administration, ch. 2.

Sec. 22-227.

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative requirement means an alternative to the reclamation standards of this article provided through a written authorization granted by the county pursuant to section 22-235.

Applicable reclamation ordinance means a nonmetallic mining reclamation ordinance, including this article that applies to a particular nonmetallic mining site and complies with the requirements of Wis. Admin. Code NR ch. 135 and Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), unless the state department of natural resources is the regulatory authority as identified in subsection (2) of the definition of the term "regulatory authority" as set forth in this section. If the state department of natural resources is the regulatory authority, the term "applicable reclamation ordinance" means the relevant and applicable provisions of Wis. Admin. Code NR ch. 135.

Borrow site means an excavation or fill area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except such term does not include commercial sources.

Contemporaneous reclamation means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.

Contiguous parcels means two or more parcels of land that share a common property boundary or have property boundaries that meet on at least one point. For purposes of this definition, parcels are contiguous notwithstanding the existence of public or private roads or easements.

Department means the state department of natural resources.

Disturbed area is any place where operations in preparation for or during mining physically disrupt, cover, compact, move, or otherwise alter the characteristics of soil, bedrock, or topography that existed prior to such operations. Disturbed areas may include, but are not limited to: working faces, excavated water bodies, pit floors, processing plant sites, stockpile areas, spoil-pile sites, woody by-products resulting directly from or displaced by nonmetallic mining, such as trees, stumps, and equipment staging areas.

Environmental pollution has the meaning set forth in Wis. Stats. § 295.11(2).

Erosion is the wearing away of the ground surface as the result of wind, running water, ice or other geological agents that abrade, detach and remove soil particles or rock material from one point on the earth's surface, for deposition elsewhere.

Financial assurance means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in section 22-231 and is sufficient to pay for reclamation activities required by this article.

Highwall means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds a 3:1 (horizontal:vertical) slope.

Landowner means the person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land if a different person possesses title to that land in fee simple or holds a land contract for that land.

Licensed professional geologist means a person who is licensed as a professional geologist pursuant to ch. 470, Stats.

Municipality means any county, city, town or village.

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.

Nonmetallic mining and ***mining*** mean all of the following:

- (1) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities, such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
- (2) Processes carried out at a nonmetallic mining site that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. Such 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.

Nonmetallic mining reclamation and ***reclamation*** mean the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this article, 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.

Nonmetallic mining refuse means waste soil, rocks and minerals, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable byproducts 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.

Nonmetallic mining site and ***site*** mean all contiguous areas of present or proposed mining described in subsection (1) of this definition, subject to the qualifications set forth in subsection (2) of this definition.

- (1) The terms "***nonmetallic mining site***" and "***site***" include the following:
 - a. The location where nonmetallic mining is proposed or conducted.
 - b. Storage and processing areas that are in, or contiguous to, areas excavated for nonmetallic mining.
 - c. Areas where nonmetallic mining refuse is deposited.
 - d. Areas affected by activities, such as the construction or improvement of private roads or haulage ways, for nonmetallic mining.
 - e. Areas where grading or regrading may be necessary.
 - f. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots or channels for surface water diversion, are located.
- (2) The terms "***nonmetallic mine site***" and "***site***" do not include any of the following areas:
 - a. Those portions of sites listed in subsection (1) of this definition that are not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.
 - b. 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.
 - c. Areas previously mined, but used after August 1, 2001, for a nonmining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

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.

Overburden is the unconsolidated material below the soil layer (rooting zone) and the above the bedrock or saleable aggregate. Overburden excludes the economically valuable sand and gravel layers which are often sandwiched between layers of overburden.

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

Quarry means an open excavation or pit that is used to extract rock, sand, or other naturally occurring minerals from the earth by digging, cutting, or blasting to be used for construction purposes.

Registered geologist means a person who is registered as a professional geologist pursuant to Wis. Stats. §§ 470.06.

Registered professional engineer means a person who is registered as a professional engineer pursuant to Wis. Stats. §§ 443.04 and 443.09.

Regulatory authority means:

- (1) The county for nonmetallic mine sites located within its jurisdiction that has an applicable reclamation ordinance under Wis. Stats. §§ 295.13, except where a municipality has adopted an applicable reclamation ordinance pursuant to subsection
- (2) A municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under Wis. Stats. §§. 295.14;
- (3) The state department of natural resources, in cases where a county mining reclamation ordinance is no longer in effect under Wis. Stats. §§. 295.14, but only if there is no applicable reclamation ordinance enacted by the municipality in which the nonmetallic mining site is located.

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. Replacement of topsoil is necessary for 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 article.

Revegetation means the re-establishment of self-sustaining plant cover on a disturbed site.

Rock face or **mining face** means the exposed vertical, or near vertical, surface of rock that results from mining or excavation activity.

Scaling means the removal of any loose rock or soil from the vertical, or nearly vertical, area of a rock face. Loose rock poses a hazard by falling or rolling from an excavation face.

Slope means the slope of earth material; sand, silt, clay, rock or any other naturally occurring material which is consolidated or unconsolidated. Slope is expressed in this document at horizontal feet to vertical feet. For example, a slope expressed as being “3:1 (H:V)” means three horizontal feet to one vertical foot. In order to be stable, a slope must not exceed the angle of repose.

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 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 byproduct material as defined in Wis. Stats. § 254.31(1).

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.

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.

Unconsolidated Material is defined as any unconsolidated material that overlies a deposit of useful material. Unconsolidated Material is the blanket of loose material that overlies bedrock and forms the surface of the land. Unconsolidated material lies between the topsoil layer and the bedrock, and is typically comprised of soil, glacial till, freshwater or marine sediments, clay, silt, sand, and gravel.

Unreclaimed acre means the 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 section 22-246(c). However, such term does not include any of the following areas:

- (1) Those areas where reclamation has been completed and certified as reclaimed under section 22-246(c).
- (2) Those areas previously affected by nonmetallic mining, but which are not used for nonmetallic mining after August 1, 2001.
- (3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this article, but are not yet affected by nonmetallic mining.
- (4) Areas previously mined, but used after August 1, 2001, for a nonmining 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 22-244, those areas within a nonmetallic mining site which the county has determined to have been successfully reclaimed on an interim basis in accordance with section 22-246(c).

(Ord. of 2-27-2003, § 10)

Cross references: Definitions generally, § 1-2.

STANDARDS

Sec. 22-228.

Standards.

All nonmetallic mining sites subject to this article shall be permitted and reclaimed in conformance with the standards below. This ordinance seeks to conserve land and water resources; headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats while preventing nonmetallic mining sites from being detrimental to the health, safety and general welfare of the community, from depreciating neighborhood property values, or being a potential nuisance to the children of the community and potentially imperil their safety.

- (1) *Generally.*
 - 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 state department of natural resources adopted pursuant to Wis. Stats. chs. 289 and 291.
 - b. *Disturbed areas 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.

1. Fugitive dust. The most common cause of dust complaints at aggregate operations, is fugitive dust. It commonly settles on cars, in homes, and on vegetation. Prohibitions against creating fugitive dust, according to Wisconsin Administrative Code NR415, apply to all aspects of mining operations including, but not limited to, the use of roadways and the operation of trucks. Every effort shall be made by the operator to suppress dust and particulate matter, and shall prevent dust and particulate matter from impacting any area outside of their immediate work area.

d. *Habitat restoration.* When the land use proposed by the reclamation plan approved pursuant to this article 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 laws related to environmental protection, zoning and land use control.

(2) *Surface water and wetland protection.* Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the state department of natural resources' water quality standards for surface waters and wetlands contained in Wis. Admin. Code NR chs. 102--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 article. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(3) *Groundwater protection.*

a. *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 the groundwater.

b. *Quality.* Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Wis. Admin. Code NR ch. 140 to be exceeded at a point of standards application defined in such chapter.

(4) *Topsoil management.*

a. *Removal, protection and redistribution.* Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation and 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 from on-site stockpiled soils, or by obtaining topsoil or topsoil substitute material 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 article, 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. Topsoil should not be used for any purpose that would preclude its timely use for reclamation.

(5) *Final grading and slopes.*

a. All areas affected by mining shall be graded in accordance with the reclamation plan approved pursuant to this article to achieve 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 areas, such as stable slopes and rock faces, which do not require final grading 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 three to one horizontal to vertical incline, unless found acceptable through an one or more of the following: alternative requirements are approved under section 22-235, 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 a site-specific engineering analysis performed by a registered professional engineer who has been found acceptable by the Regulatory Authority. The cost of obtaining such an analysis shall be at the operator's expense, and subject to acceptance by the Regulatory Authority. The engineering analysis shall show that a minimum acceptable slope stability factor is attainable at a steeper slope and that the post-mining land use specified in the reclamation plan is not adversely affected. When the slope occurs at the edge of a body of water, the approved slope shall extend vertically six feet below the lowest seasonal water level. A slope no steeper than three to one shall be created at a designated locations, depending on the size of the water body, to allow for a safe exit.

c. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil

or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(6) *Topsoil redistribution for reclamation.* Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this article and 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) *Revegetation and site stabilization.* Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this article, 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.*

a. 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 article. Criteria to evaluate reclamation success shall be quantifiable.

b. Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:

1. On-site inspections by the county or its agent;
2. Reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photographic 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.

c. In the cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a premining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this subsection (8).

d. Revegetation success may be determined by comparison to:

1. An appropriate reference area;
2. Baseline data acquired at the mining site prior to its being affected by mining; or
3. An approved alternate technical standard.

e. 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 22-231 is maintained, covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

(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 article or meet the goals specified in the reclamation plan approved pursuant to this article.
(Ord. of 2-27-2003, § 11)

PERMITTING

Sec. 22-229.

Permit application.

(a) *Required.* All operators of nonmetallic mining sites shall apply for a reclamation permit from the county. 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 Sec. 22-225, subsection b. All applications for reclamation permits under this section shall be accompanied by the following information:

- (1) A brief description of the general location and nature of the nonmetallic mine.
- (2) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
- (3) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
- (4) The name, address and telephone number of the person or organization that is the operator.
- (5) A certification by the operator of his intent to comply with the statewide nonmetallic mining reclamation standards established by this article.

Reclamation Permit Application Contents. The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to Vernon County Land and Water Conservation, at 220 Airport Road, Viroqua, Wisconsin 54665, using either certified or registered mailing, prior to beginning operations.

- a. The information required by subsection (a) of this section.
 - b. The plan review and annual fees required by sections 22-243 and 22-244.
 - c. A reclamation plan conforming to section 22-230.
 - d. A certification that the operator will, as a condition of the reclamation permit, provide financial assurance as required by section 22-231, upon granting of the reclamation permit and before mining begins.
 - e. A statement signed by the landowner, if different than the operator, that they agree with the proposed reclamation plan and will allow its implementation.
- (2) To avoid duplication, the permit application and submittals required under this subsection (c) may, by reference, incorporate existing plans or materials that meet the requirements of this article.
(Ord. of 2-27-2003, § 12)

Reclamation plan.

A reclamation plan should be simple, practical, and easy to implement, and flexible, taking into account the potential for unanticipated changes in the geology and the market that will affect reclamation. The plan should have provisions for quality reclamation even if mining to depletion never occurs. Significant variations from the approved reclamation plan require that a new reclamation plan be submitted for approval. Managers and senior equipment operators must be familiar with the reclamation obligations to which the permit holder has committed. An application shall contain a narrative explaining the uses, condition, capability and productivity of the land within the proposed permit area, including a map and supporting narrative of the uses of the land existing at the time of the filing of the application. Land use shall be in terms of specific land use or management activity. A statement of type of vegetation or cover is not adequate.

(a) *Requirements.* All operators who conduct or plan to conduct nonmetallic mining shall submit to Vernon County Land and Water Conservation Department a reclamation plan that meets the reclamation standards of Part II, and all of the following requirements:

(1) *Reclamation Plan Components.* The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:

- a. Maps of the nonmetallic mining site, including the:
 1. General location, property boundaries, aerial extent, geologic composition and depth of the nonmetallic mineral deposit;
 2. Distribution, thickness and type of topsoil;
 3. Approximate elevation of groundwater 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;
 4. Location of surface waters; and
 5. Existing drainage patterns.
- b. Information available to the mine operator on biological resources, plant communities and wildlife use at, and adjacent to, the proposed or operating mine site.
- c. Existing topography as shown on contour maps of the site at ten-foot contour intervals.
- d. Location of manmade features on or near the site.
- e. For existing mines, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.
- f. The location and elevation of monitoring stations, streams, ponds, springs, wells and sinkholes.
- g. The location, width, and length of buffers, if any

(3) *Post-mining land use.*

- a. The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining

land use shall also be consistent with all applicable local, state or federal laws in effect at the time the plan is submitted.

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

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

- a. A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures, and if necessary, a site-specific engineering analysis performed by a registered professional engineer.
- b. The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.
- c. A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.
- d. A plan or map which shows surface structures, roads and related facilities after the cessation of mining.
- e. The estimated cost of reclamation for each stage of the project or the entire site, if reclamation staging is not planned, and an explanation of how the reclamation estimate was reached.
- f. A revegetation plan which shall include:
 1. Timing and methods of seed bed preparation;
 2. Rates and kinds of soil amendments;
 3. Seed application timing, methods and rates;
 4. Mulching;
 5. Netting and any other techniques needed to accomplish soil and slope stabilization.
- g. Quantifiable standards for revegetation that are 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 of vegetative cover, productivity, plant density, diversity or other applicable measures acceptable to the regulatory authority.
- h. A plan and, if necessary, a narrative, showing erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface water and groundwater.
- i. A description of any areas which will be reclaimed on an interim basis, sufficient to qualify for the waiver of fees pursuant to section 22-246(b) and (d), and release of financial assurance pursuant to section 22-228(8), and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in this article and timing of interim and final reclamation.

j. 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 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.

(5) *Assuring successful reclamation.* The reclamation plan shall contain criteria for assuring successful reclamation in accordance section 22-228(8).

(6) *Certification.*

a. The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. The landowner and lessee, if different from the mine operator, shall also provide signed certifications that they concur with the reclamation plan and will allow its implementation.

(b) *Existing Plans and Approvals.* To avoid duplication of effort, the reclamation plan required by this section may, by reference, incorporate existing plans or materials that meet the requirements of this article.

(7) *Approval.* The operator shall keep a copy of the reclamation plan required by this section, once approved by the county under this article, at the mine site or, if not practicable, at the operator's nearest office or place of business.

(c) *New mines.* The operator of any nonmetallic mining site that was not in operation prior to August 1, 2001, who applies for a permit in conformance with section 22-229(c), shall submit the reclamation plan required by subsection (a) of this section with his application for a reclamation permit.

(d) (Removed)

(e) *Approval and denial.* The county shall approve, conditionally approve or deny the reclamation plan submitted under this section, in writing, in accordance with section 22-233(d) for mines that apply for a reclamation permit in conformance with section 22-229(c). Conditional approval of reclamation plans shall be made in accordance with section 22-233(g) and denials of reclamation plans shall be made pursuant to section 22-234. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

(Ord. of 2-27-2003, § 13)

Sec. 22-231.

Financial assurance.

(a) *Requirements.* All operators of nonmetallic mining sites in the county shall prepare and submit proof of financial assurance that meets the following requirements:

(1) *Notification.* The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under subsection (a)(3) of this section. The County shall establish what it considers a fair amount of financial assurance for each nonmetallic mining site permitted under this chapter.

(2) *Filing.* Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file financial assurance with the county. The financial assurance shall provide that the operator shall faithfully perform all

requirements in this article, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the county. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the county only if the county currently has primary regulatory responsibility.

(3) *Amount and duration.* The amount of financial assurance shall equal, as closely as possible, the cost to the county of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the county to assure it equals outstanding reclamation costs. Any financial assurance filed with the county shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The county may accept a lesser initial amount of financial assurance, provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to affect 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 in the reclamation plan. Such time period may extend beyond the permit if such extension is required to accomplish successful and complete implementation of the reclamation plan.

(4) *Form and management.* Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the county and released upon successful completion of the reclamation measures specified in the reclamation plan. Financial assurance arrangements may include, at the discretion of Vernon County Land and Water Conservation Department, a blend of different options for financial assurance. Alternate financial assurances may include, but are not limited to, cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstrations of financial responsibility by meeting net worth requirements or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the county, a blend of different options for financial assurance, including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.

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

(6) *Multiple jurisdictions.* In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove

financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

(7) *Certification of completion and release.*

a. The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he determines that 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 to determine if reclamation has been carried out in accordance with the approved reclamation plan. The county may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete, the county shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.

b. The county shall make a determination of whether or not the certification in subsection (a)(7)a. of this section can be made within 60 days of receiving the request.

c. Under this subsection (a)(7), the county may make the following determination:

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

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

a. A permit is revoked under section 22-241 and the appeals process has been completed.

b. An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan. Mining shall be considered ended when three years have passed with no mining activity taking place at the site. The Regulatory Authority may consider extending the time limit on a case by case basis.

(9) *Cancellation.* Financial assurance shall provide that it may not be cancelled by the surety, or other holder or issuer, except after not less than a 90-day notice to the Vernon County Land and Water Conservation Department in writing, by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the county a replacement proof of financial assurance. In the absence of the replacement financial assurance, all mining shall cease until the time such replacement financial assurance is delivered and in effect.

(10) *Changing methods.* The operator of a nonmetallic mining site may change from one method of financial assurance to another. Such change may not be done more than once a year unless required by an adjustment imposed pursuant to subsection (a)(12) of this section. The operator shall give the county at least 60 days' notice prior

to changing methods of financial assurance and may not actually change methods without the written approval of the county.

(11) *Bankruptcy notification.* The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of a voluntary or involuntary proceeding under the bankruptcy code, 11 USC 101 et seq., naming the operator as debtor, within ten days of commencement of the proceeding.

(12) *Adjustments.* Financial assurance may be adjusted when required by the county. The county may notify the operator in writing that adjustment is necessary and the reasons for such adjustment. The county may adjust financial assurance based upon prevailing or projected interest or inflation rates, ~~or~~ the latest cost estimates for reclamation, or any other appropriate reason.

(13) *Net worth test.*

a. Only an operator that meets the definition of the term "company" in Wis. Stats. § 289.41(1)(b) may use the net worth method of providing financial assurance.

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

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

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

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

(c) *Private Nonmetallic Mines.* The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with section 22-229(c) shall submit the proof of financial assurance required by subsection (a) of this section as specified in the reclamation permit issued to the operator under this article.

(d) *Public Nonmetallic Mines.* The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the state, a state agency, board, commission or department, or a municipality.

(Ord. of 2-27-2003, § 14)

Sec. 22-232.

Public notice and right of hearing.

The county shall, provide public notice and the opportunity for a public informational hearing as follows:

(1) *Public notice.*

a. When the county receives an application to issue a reclamation permit, it shall publish a public notice of the application no later than 30 days after receipt of a complete application that satisfies the requirements of section 22-229(c).

b. The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published in the official newspaper of the county as a class 1 notice pursuant to Wis. Stats. § 985.07(2). The notice shall mention the opportunity for a public hearing pursuant to subsection (a)(2) of this section, and shall give the locations at which the public may review the application and all supporting materials, including the reclamation plan.

c. Copies of the notice shall be forwarded by the county to the county or applicable local zoning board, the county and applicable local planning organization, the county land conservation officer and owners of land within 300 feet of the boundaries of the parcel of land on which the site is located.

(2) *Hearing.* The county shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows:

a. The county shall hold a public informational hearing on an application for a nonmetallic mining permit during its monthly meeting. If it conducts a zoning related hearing on the nonmetallic mine site, the county shall provide the opportunity at the hearing to present testimony on reclamation related matters. Such opportunity shall fulfill the requirement for a public hearing for a nonmetallic mining reclamation permit required by this subsection (a)(2). The county shall consider the reclamation related testimony in the zoning related hearing in deciding on a permit application pursuant to this article. The county shall consider reclamation related testimony in deciding on a permit application pursuant to this article at that time.

b. If there is no opportunity for a zoning related hearing on the nonmetallic mine site as described in subsection (a)(2)a. of this section, 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. Vernon County Land and Water Conservation Department shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under sub. (1). 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.

(c) *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 section 22-233(e).

(Ord. of 2-27-2003, § 15)

Sec. 22-233.

Issuance of a Nonmetallic Mining Reclamation Permit

(a) *Permit Required.* No person may engage in nonmetallic mining or nonmetallic mining reclamation in Vernon County without first obtaining a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this chapter.

(b) *New mines.* Applications for reclamation permits for nonmetallic mining that satisfy the requirements of section 22-229(c), shall be issued a reclamation permit or otherwise acted on as follows:

- (1) Unless denied pursuant to section 22-234, the county shall approve in writing a request that satisfies the requirements of section 22-229(c) to issue a nonmetallic mining reclamation permit for the proposed nonmetallic mine.
- (2) The county may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of section 22-230. The regulatory authority may issue a reclamation permit subject to conditions in subsection (g) of this section, 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 pursuant to this article, unless a public hearing is held pursuant to section 22-232. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to subsection (g) of this section, if appropriate, or shall deny the permit as provided in section 22-234, no later than 60 days after completing the public hearing.
- (3) Permits issued pursuant to this subsection (d) shall require compliance with a reclamation plan that has been approved and satisfies the requirements of section 22-230, and provision by the applicant of financial assurance required under section 22-231 and payable to the county prior to beginning mining.

(c) *Automatic permit for local transportation related mines.*

- (1) The county shall automatically issue an expedited permit under this subsection (e) to any borrow site that:
 - a. Will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
 - b. Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the municipality;
 - c. Is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the state department of transportation concerning the restoration of nonmetallic mining sites; and
 - d. Is not a commercial source; and
 - e. Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and
 - f. Is not otherwise exempt from the requirements of this article under section 22-225(b)(10).
- (2) For the purposes of this subsection (e), the term "municipality" has the meaning defined in Wis. Stats. § 299.01(8).
- (3) Automatic permits shall be issued under this subsection (e) in accordance with the following:
 - a. The applicant shall notify the county of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.

- b. The applicant shall provide evidence to the county to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.
- c. The county shall accept the contractual provisions incorporating requirements of the state department of transportation in lieu of a reclamation plan under section 22-230.
- d. The county shall accept the contractual provisions in lieu of the financial assurance requirements set forth in section 22-231.
- e. The public notice and hearing provisions of section 22-232 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection (e).
- f. Mines permitted under this subsection (e) shall pay an annual fee to the county as provided in section 22-244, but shall not be subject to the plan review fee provided in section 22-243.
- g. The county shall issue the automatic permit within seven days of the receipt of a complete application.
- h. If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection (e) still applies, provided, the site will be reclaimed under a contractual obligation with the municipality in accordance with the state department of transportation's requirements.
- i. Notwithstanding sections 22-242, the operator of a borrow site under this subsection (e) is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

(d) *Expedited review.*

- (1) Any operator of a nonmetallic mining site may request expedited review of a reclamation permit as follows:
 - a. The operator may submit a request for expedited permit review with payment of the expedited review fee specified in section 22-243(b). The request shall state the need for such expedited review and the date by which such expedited review is requested.
 - b. The operator may submit a request for expedited review under this subsection (f) if the applicant requires a reclamation permit to perform services under contract with a municipality. The request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.
- (2) Following receipt of a request under this subsection (f), the county shall inform the applicant of the estimated date for a decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under subsection (f)(1)a. of this section shall be returned.
- (3) Expedited review under this subsection (f) shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to section 22-232. This subsection (f) does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection (f) by a specific date.

(e) *Permit Conditions.* Any decision under this section may include conditions as follows:

- (1) The county may issue a reclamation permit or approve a reclamation plan subject to general or site specific conditions, if needed, to assure compliance with the nonmetallic mining reclamation requirements of this article.
- (2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to section 22-231 prior to beginning mining.
(Ord. of 2-27-2003, § 16)

Sec. 22-234.

Permit denial.

- (a) An application for a nonmetallic mining reclamation permit shall be denied as follows:
 - (1) An application to issue a nonmetallic mining reclamation permit shall be denied within the time frame for permit issuance specified in section 22-233, if the county finds any of the following:
 - a. The applicant has, after being given an opportunity to make corrections, failed to provide to the county an adequate permit application, reclamation plan, financial assurance or any other submittal required by Wis. Admin. Code NR ch. 135 or this article.
 - b. The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this article, Wis. Admin. Code NR ch. 135 or Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.).
 - c. The applicant or his agent, principal or predecessor has, during the course of nonmetallic mining in the state within ten years of the permit application or modification request being considered, shown a pattern of serious violations of this article or of federal, state or local environmental laws related to nonmetallic mining reclamation. The following may be considered in making a determination of a pattern of such serious violations:
 1. Results of judicial or administrative proceedings involving the operator or his agent, principal or predecessor.
 2. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this article, other reclamation ordinances or Wis. Admin. Code NR ch. 135.
 3. Forfeitures of financial assurance.
- (b) A denial under this section shall be in writing and shall contain documentation of reasons for such denial.
- (c) A decision to deny an application to issue a reclamation permit may be reviewed under section 22-239.
(Ord. of 2-27-2003, § 17)

Sec. 22-235.

Alternative requirements.

- (a) *Criteria.* An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in section 22-238. The county may approve an alternative requirement to the reclamation standards established in this article 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 or reclamation plan has a unique characteristic which requires an alternative requirement.

- (2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.
- (3) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.
- (4) The situation prompting the request for an alternative requirement did not occur as a result of the operator creating a situation where he could not follow the established reclamation requirements. Actions by the operator after the effective date of this ordinance shall be construed to have been taken with the knowledge of the rules and regulations contained herein.

(b) *Procedures.*

- (1) The operator of a nonmetallic mining site requesting an alternate requirement shall demonstrate all of the criteria set forth in subsection (a) of this section. This shall be submitted in writing to the county land and water conservation department.
- (2) The alternatives submitted by the operator of a nonmetallic mining site shall be in writing and shall be considered for review during a public informational hearing.
- (3) The procedures for the public information hearing shall follow the procedures set forth in section 22-232.

(c) *Transmittal of decision.* The decision on a request for alternate reclamation requirements shall be made in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

(d) *Notice to state department of natural resources.* The county shall provide notice to the state department of natural resources as set forth in subsection (b)(1) of this section. Written notice shall be given to the state department of natural resources at least ten days prior to any public hearing held under subsection (b) of this section on a request for an alternate requirement. A copy of any written decision on alternative requirements shall be submitted to the state department of natural resources within ten days of issuance of such decision.
(Ord. of 2-27-2003, § 18)

Sec. 22-236.

Permit duration.

- (a) The duration of a nonmetallic mining reclamation permit issued under this article shall be through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to section 22-249(b).
- (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 section 22-237. Verification of the duration of the mine lease shall be provided to the Vernon County Land and Water Conservation Department in order to establish the length the Nonmetallic Mining Reclamation Permit may cover.
(Ord. of 2-27-2003, § 19)

Sec. 22-237.

Permit transfer.

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

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

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

(Ord. of 2-27-2003, § 20)

Sec. 22-238.

Previously permitted sites.

For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Wis. Admin. Code NR ch. 135 and that becomes subject to reclamation permitting authority of the county, the terms and conditions of the previously issued municipal reclamation permit shall remain in force until modified by the county pursuant to section 22-240(a).

(Ord. of 2-27-2003, § 21)

Sec. 22-239.

Review.

(a) Any permitting decision or action made by the county under this article may be reviewed as set forth in this section.

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

(Ord. of 2-27-2003, § 22)

ADMINISTRATION

Sec. 22-240.

Permit modifications.

Modifying a permit or reclamation plan may require the operator to submit a fee along with the requested modification. The cost of modifying a permit or reclamation plan can be found in the appendix to this ordinance under the heading "Reclamation Plan Review Fee Required for Permit Modification".

(a) *Order of the county.* A nonmetallic mining reclamation permit issued under this article may be modified by the county if the county finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Wis. Admin. Code NR ch. 135 or this article. Such modification shall be by an order modifying the permit in accordance with section 22-249. The modifying order may require the operator to amend or submit new application information, a reclamation plan, proof of financial assurance or other information needed to ensure compliance with Wis. Admin. Code NR ch. 135 or this article.

(b) *Operator's request.* If the operator of any nonmetallic mine that holds a reclamation permit issued under this article desires to modify such permit or reclamation plan approved under this article, such operator may request such modification by submitting a written application for such modification to the Vernon County Land and Water Conservation Department at 220 Airport Road, Viroqua, Wisconsin 54665. The application for permit or plan modification shall be acted on using the standards and procedures of this article.

(c) *Occurrence of changes.* The operator of any nonmetallic mine that holds a reclamation permit issued under this article 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 article. Such application for permit modification shall be acted on using the standards and procedures of this article, and shall be subject to the same fees explained in sub. (b).

(d) *Review.* All actions by the county on permit modifications requested or initiated under this section are subject to review under section 22-239.

(Ord. of 2-27-2003, § 23)

Sec. 22-241.

Permit suspension and revocation.

(a) *Grounds.* The county may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this article if the county finds the operator has done any of the following:

- (1) Failed to submit a satisfactory reclamation plan within the time frames specified in this article.
- (2) Failed to submit or maintain financial assurance as required by this article.
- (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 as set forth in subsection (a) of this section, it may issue a special order suspending or revoking such permit as set forth in section 22-249(b).

(c) *Consequences.*

- (1) If the county makes any of the findings in subsection (a) of this section, 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 regulatory authority pursuant to section 22-249.
- (2) If the county makes any of the findings in subsection (a) of this section, it may revoke a nonmetallic mining reclamation permit. Upon such permit revocation, the operator shall forfeit to the county the financial assurance it has provided pursuant to this article. The county may use forfeited financial assurance to reclaim the site to the extent needed to comply with this article and the applicable reclamation ordinance.

(Ord. of 2-27-2003, § 24)

Sec. 22-242.

Annual operator reporting.

(a) *Contents and deadline.* Annual reports that satisfy the following requirements shall be submitted by the operators of nonmetallic mining sites.

- (1) *Contents.* The annual report required by this section shall include all of the following:
 - a. The name and mailing address of the operator.
 - b. The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number, if available.
 - c. The identification number of the applicable nonmetallic mining permit, if assigned by the county.

- d. The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
- e. The amount of acreage that has been reclaimed to date, on a permanent basis, and the amount reclaimed on an interim basis.
- f. A plan, map or diagram accurately showing the acreage described in subsections (a)(1)d. and e. of this section.
- g. The following certification, signed by the operator:
 "I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Wis. Admin. Code NR ch. 135."

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

(3) *Duration.* Annual reports shall be submitted by an operator for all active and intermittent mining sites to the county for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to section 22-246(c) or at the time of release of financial assurance pursuant to section 22-231(a)(7).

(b) *Inspection in lieu of report.* The county may, at its discretion, obtain the information required in subsection (a) of this section 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 such case, the county shall require the operator to submit the certification required in subsection (a)(1)g. of this section.

(c) *Retention period.* Annual reports submitted under subsection (a) of this section or inspection records that replace such annual reports under subsection (b) of this section shall be retained by the Vernon County Land and Water Conservation Department at 220 Airport Lane, Viroqua, Wisconsin 54665, for at least ten years after the calendar year to which they apply. Such records, or complete and accurate copies thereof, shall be made available to the state department of natural resources upon written request or during its inspection or audit activities carried out pursuant to Wis. Admin. Code NR ch. 135.

(Ord. of 2-27-2003, § 25)

Sec. 22-243.

Plan review fees.

(a) *Amount and applicability.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under section 22-229(c) shall submit a nonrefundable plan review fee as found in the appendix of this article, and amended from time to time. Plan review fees shall be posted in the appendix of this article. Plan review fees shall be submitted to the Vernon County Land and Water Conservation Department at 220 Airport Road, Viroqua, Wisconsin 54665. No plan review fee may be assessed under this section for any local transportation related mining receiving an automatic permit under section 22-233(e). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to section 22-240.

(b) *Expedited reclamation plan review fee.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under section 22-229(c) may obtain an expedited reclamation plan review by paying a fee to be determined by the County Land and Water Conservation Committee and amended from time to time. Expedited fees

shall be posted in appendix A of this article. Such fee shall be in addition to the fee required in subsection (a) of this section.

(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 section 22-244.

(d) *Plan modification review fee.*

(1) If a reclamation plan is modified to an extent that public notice and the opportunity for a public hearing are required in accordance with section 22-232(b)(3), a reclamation plan review fee for the revised plan shall be paid by the operator to the county. (See appendix A of this article for the applicable fee under Fee for Review of Modified Reclamation Plan.)

(2) Fees paid under this subsection (d) are in addition to any other fees.

(3) The regulatory authority shall make the determination whether a public notice and the opportunity for a public hearing is needed.

(Ord. of 2-27-2003, § 26)

Sec. 22-244.

Annual fees.

(a) *Applicability, procedures and deadline. Areas Subject to Fees, Procedures, Deadline and Amount.*

(1) Operators of all nonmetallic mining sites subject to reclamation permits issued under this article shall pay annual fees to the county land and water conservation department.

(2) Fees paid under this section shall be calculated based on the unreclaimed acres of a nonmetallic mining site, defined as follows:

a. The term "unreclaimed acre" means the unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001, and areas where nonmetallic mining reclamation has not been completed, or where nonmetallic mining reclamation has been completed, but is not yet certified as reclaimed under section 22-231(a)(7). However such term does not include any areas described in subsection (a)(2)b. of this section.

b. The term "unreclaimed acre" does not include areas defined as not included in a nonmetallic mining site under section 22-227.

(3) Fees assessed pursuant to this section shall be based on unreclaimed acres at the end of the year, and on any additional acreage expected to be disturbed in the upcoming year. Such fees apply to a calendar year, or any part thereof, in which nonmetallic mining takes place, until final reclamation is certified as complete under section 22-246. Fees shall be paid no later than January 31 for the upcoming year. Fees can be found in a table labeled "Annual Fees" can be found in the appendix to this ordinance.

(5) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that the fees be held by the county, pending certification of completed reclamation pursuant to section 22-231(a)(7). Upon such certification, the county shall refund that portion of the annual fee that applies to the reclaimed areas. If the county fails to make a determination

under section 22-231(a)(7) within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.

(b) *State department of natural resources' share.*

(1) Fees paid under this section shall, except where provided in subsection (b)(2) of this section, include a share for the state department of natural resources that is equal to the amount specified in the following table 1.

TABLE 1
Wisconsin Department of Natural Resources' Share of Annual Fees
Collected by Vernon County

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1--5 acres (not including mines < 1 acre)	\$35
6--10 acres	\$70
11--15 acres	\$105
16--25 acres	\$140
26--50 acres	\$160
51 acres or larger	\$175

(2) For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the state department of natural resources' share shall be \$15.00.

(3) The county shall forward fees collected under this subsection (b) to the state department of natural resources by March 31 of the year for which such fees were collected.

(c) *County's share.* Fees paid under this section shall also include an annual fee due to the county which shall be determined by the county land and water conservation committee and may be amended from time to time. The annual fees shall be posted in appendix A of this article.

Annual fees shall be based on an unreclaimed acres, and equal as closely as possible the cost to the county of administering the reclamation program. The formula for determining the amount of annual fees to be paid shall be as follows:

- (1) Add all unreclaimed acres at the end of the calendar year
- (2) Add any additional acreage expected to be disturbed in the upcoming year
- (3) Subtract any acres certified as reclaimed by the Vernon County Land & Water Conservation Department. This total will determine how many acres annual fees are to be paid on for the upcoming year. All annual fees shall be paid to the Vernon County Land and Water Conservation Department, 220 Airport Road, Viroqua, Wisconsin 54665.

(d) *Automatically Permitted Local Transportation Project Related Mines.* The annual fee collected by the county under this subsection for local transportation-related mines issued permits under Sec. 22-225, sub. (10), may not exceed the amounts set forth in Table 2. The amount listed below shall be the total fee assessed on such nonmetallic mines, and shall include both a share for the Wisconsin Department of Natural Resources and the Vernon County Land and Water Conservation Department.

TABLE 2

Limit on Total Annual Fees for Automatically Permitted
Local Transportation Project Related Mines

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee (county share)
1--5 acres, not including mines < 1 acre	\$175
6--10 acres	\$350
11--15 acres	\$525
16--25 acres	\$700
26--50 acres	\$810
51 acres or larger	\$870

(e) *Documentation of county's share.*

(1) The county shall document in writing its estimated program costs and the need for the fee established in subsection (c) of this section on or before June 1, 2001. Such documentation shall be available for public inspection at the county land and water conservation department.

(2) The department of natural resources' annual fees, where it regulates nonmetallic mining sites set pursuant to Wis. Admin. Code NR § 135.39(4)(c), are set forth in the following tables 3 and 4. The documentation in this subsection (e) is needed only if a regulatory authority's fees exceed those listed in tables 3 and 4. In any event, Wis. Stats. § 295.15 prohibits a regulatory authority from using its fees for purposes other than the administration of its nonmetallic mining reclamation ordinance.

TABLE 3

Annual Fees Due Where the Department of
Natural Resources is the Regulatory Authority

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1--5 acres, not including mines < 1 acre	\$175
6--10 acres	\$350
11--15 acres	\$525
16--25 acres	\$700
26--50 acres	\$810
51 acres or larger	\$870

(Ord. of 2-27-2003, § 27)

Sec. 22-245. **Regulatory reporting and documentation.**

(a) *Annual report.* The county shall send an annual report to the state department of natural resources by March 31 of each calendar year. The report shall include the following information for the previous year's nonmetallic mining reclamation program:

- (1) Total number of nonmetallic mining reclamation permits in effect.
- (2) Number of new permits issued within the jurisdiction of the county.
- (3) Number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.
- (4) Number of acres being mined or unreclaimed acres.
- (5) Number of acres that have been reclaimed and have had financial assurance released pursuant to section 22-231(a)(7).
- (6) Number of acres that are reclaimed and awaiting release from the financial assurance requirements of this article pursuant to subsections 22-246(a) and (b).
- (7) Number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.

(b) *Documentation.* The county shall, to the best of its ability, maintain the following information, and make such information available to the state department of natural resources for its audit of the county's reclamation program pursuant to Wis. Admin. Code NR ch. 135:

- (1) Documentation of compliance with Wis. Admin. Code NR ch. 135 and this article.
- (2) Procedures employed by the county regarding reclamation plan review, and the issuance and modification of permits.
- (3) Methods for review of annual reports received from operators.
- (4) Method and effectiveness of fee collection.

- (5) Procedures to accurately forward the state department of natural resources' portion of collected fees in a timely fashion.
- (6) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.
- (7) Responses to citizens' complaints.
- (8) Method of, and accuracy in, determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.
- (9) Maintenance and availability of records.
- (10) Number and type of approvals for alternative requirements issued pursuant to section 22-235.
- (11) Method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to section 22-231(a)(7).
- (12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the county to implement its nonmetallic mining reclamation program under this article.
- (13) Amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.
- (14) Any other performance criteria necessary to ascertain compliance with Wis. Admin. Code NR ch. 135.
(Ord. of 2-27-2003, § 28)

Sec. 22-246.

Completed Reclamation - Reporting, Certification and Effect

- (a) *Certification of completion.* 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 article and Wis. Admin. Code NR ch. 135 by submitting a written statement to the Regulatory Authority stating such, and explaining the exact location of the area the operator considers reclaimed. If a written statement is not submitted by the operator, the Regulatory Authority is under no obligation to inspect or certify the acreage in question as reclaimed, and shall not be required to reduce financial assurance or annual fees on those acres.
- (b) *Report 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 article and Wis. Admin. Code NR ch. 135. Reporting of interim reclamation shall be done according to the procedures set forth in subsection (a) of this section.
- (c) *Inspection.* The county shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this section within 60 days of receipt of such report, and make a determination in writing in accordance with section 22-231(a)(7)c. If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms to section 22-230, the county shall issue the mine operator a written certificate of completion.
- (d) *Effect of completed reclamation.* If reclamation is certified by the county as complete under subsection (c) of this section for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under section 22-244 for the certified area.
- (2) The financial assurance required by section 22-231 shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.
- (3) For sites which are reported as interim reclaimed under subsection (b) of this section and so certified under subsection (c) of this section, financial assurance for reclaiming the certified area shall be reduced per acre.

(e) *Effect of inaction following report of completed reclamation.* If no written response as required by subsection (c) of this section for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the county under section 22-244 shall be refunded unless the reporting requirements under subsection (b) of this section were not followed by the operator.

(Ord. of 2-27-2003, § 29)

Sec. 22-247. **Permit termination.**

When all final reclamation required by a reclamation plan conforming to section 22-230 and required by this article is certified as complete pursuant to sections 22-231(a)(7) and 22-246(c), the county shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

(Ord. of 2-27-2003, § 30)

ENFORCEMENT

Sec. 22-248. **Right of entry and inspection.**

For the purpose of ascertaining compliance with the provisions of Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135 or this article, any authorized officer, agent, employee or representative of the county may inspect any nonmetallic mining site subject to this article as follows:

- (1) No person may refuse entry or access onto a nonmetallic mining site by a duly authorized officer, employee or agent of the county or the state department of natural resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this article, Wis. Admin. Code NR ch. 135 or Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.).
- (2) Any person who enters the site under such right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local law or regulation controlling persons on the nonmetallic mining site.

(Ord. of 2-27-2003, § 31)

Sec. 22-249. **Orders and citations.**

(a) *Enforcement orders.* The county may issue orders as set forth in Wis. Stats. § 295.19(1)(a) to enforce Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135, this article, a permit issued pursuant to this article or a reclamation plan required by section 22-230 and a permit issued under this article. A violation of this article, an order or permit issued pursuant to this article or a reclamation plan required by section 22-230 and a permit issued under this article shall be considered a

violation of Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.) and Wis. Admin. Code NR ch. 135.

(b) *Special orders.* The county may issue 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 22-241, or directing an operator to immediately cease an activity regulated under Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135 or this article until the necessary plan approval is obtained.

(c) *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 Wis. Stats. § 68.11, notwithstanding the provisions of Wis. Stats. §§ 68.001, 68.03(8) and (9), 68.06 and 68.10(1)(b).

(d) *Citations.* The county may issue a citation under Wis. Stats. § 66.119 and collect forfeitures to enforce Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135, this article, a permit issued pursuant to this article or a reclamation plan required by section 22-230 and a permit issued under this article. 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.

(e) *Enforcement.* The county may submit any order issued under this section to abate violations of this article to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement, and such district attorney, corporation counsel, municipal attorney or the attorney general may enforce the orders.

(Ord. of 2-27-2003, § 32)

Sec. 22-250.

Violations; penalties.

Any violation of Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135, this article, a permit issued pursuant to this article or a reclamation plan required by section 22-230 and a permit issued under this article may result in forfeitures as provided in Wis. Stats. § 295.19(3), as follows:

(1) Any person who violates Wis. Admin. Code NR ch. 135 or an order issued under section 22-249 may be required to forfeit not less than \$25.00, nor more than \$1,000.00 for each violation. Each day of continued violation is a separate offense. While an order issued under section 22-249 is suspended, stayed or enjoined, such penalty does not accrue.

(2) Except for the violations referred to in subsection (1) of this section, any person who violates Wis. Stats. ch. 295, subch. I (Wis. Stats. § 295.11 et seq.), Wis. Admin. Code NR ch. 135, any reclamation plan approved pursuant to this article or an order issued pursuant to section 22-249 shall forfeit not less than \$10.00, nor more than \$5,000.00 for each violation. Each day of such violation is a separate offense. While an order issued under section 22-249 is suspended, stayed or enjoined, such penalty does not accrue.

(Ord. of 2-27-2003, § 33)

APPENDIX
Annual Fees - Table 1

Mine size in unreclaimed acres	Annual Fee (County share)	Annual fee (DNR share)	Total annual fee
1 acre	200	35	\$235
2 acres	230	35	\$265
3 acres	260	35	\$295
4 acres	290	35	\$325
5 acres	320	35	\$355
6 acres	350	70	\$420
7 acres	380	70	\$450
8 acres	410	70	\$480
9 acres	440	70	\$510
10 acres	470	70	\$540
11 acres	500	105	\$605
12 acres	530	105	\$635
13 acres	560	105	\$665
14 acres	590	105	\$695
15 acres	620	105	\$725
16 acres	650	140	\$790
17 acres	680	140	\$820
18 acres	710	140	\$850
19 acres	740	140	\$880
20 acres	770	140	\$910
21 acres	800	140	\$940
22 acres	830	140	\$970
23 acres	860	140	\$1,000
24 acres	890	140	\$1,030
25 acres	920	140	\$1,060
26 acres	950	160	\$1,110
27 acres	980	160	\$1,140
28 acres	1,010	160	\$1,170
29 acres	1,040	160	\$1,200
30 acres	1,070	160	\$1,230
31 acres	1,100	160	\$1,260
32 acres	1,130	160	\$1,290
33 acres	1,160	160	\$1,320
34 acres	1,190	160	\$1,350
35 acres	1,220	160	\$1,380
36 - 40 acres	1,280	160	\$1,440
41 - 45 acres	1,340	160	\$1,500
46 - 50 acres	1,400	160	\$1,560
51 - 60 acres	1,460	175	\$1,635
61 - 70 acres	1,520	175	\$1,695
71 - 80 acres	1,580	175	\$1,755
More than 80 acres	1,640	175	\$1,815

TABLE 2
Reclamation Plan Review Fee

Unreclaimed Acres, Rounded to the Nearest Whole Acre <i>(expected to be opened during the first year)</i>	Reclamation Plan Review Fee
Under 5 acres	\$300.00
6--20 acres	500.00
21 or more acres	800.00

Expedited Review for New or Reopened Mines

An expedited review may be requested by an operator for a nonmetallic mining reclamation permit application as stated in section 22-233(f). The operator shall provide the required information and documentation along with an expedited review fee. The expedited review fee shall be \$600, and shall be in addition to the regular reclamation plan review fee and annual fee.

RECLAMATION

Applicable Permits Required

All applicable permits must be included with each reclamation plan, including the stormwater discharge permit issued by the state department of natural resources.

Reclamation Plan Review Fee Required For Permit Modification

Section 22-243(d) states that modification of an existing nonmetallic mining reclamation permit or plan may be required due to changing conditions, noncompliance issues, the nature of the planned reclamation or other aspects of mining. Also, section 22-243(a) states that a separate plan review fee shall be paid for any modification to an existing reclamation plan. The fee for modifying an existing reclamation plan or permit shall be either:

•	\$100.00 per site, if the modification does not require public notice (the determination on whether public notice is required shall be made by the regulatory authority); or
•	\$300 per site, if the modification requires public notice (the determination on whether public notice is required shall be made by the regulatory authority).

Final and Interim Reclamation

The operator of a nonmetallic mining site may report that reclamation has been completed for part or all of a nonmetallic mining site at any time. The regulatory authority will make a determination of whether reclamation has been successful at the site, and then notify the operator of their determination.

For sites that have reported interim reclamation (the area reclaimed is expected to be disturbed again prior to final reclamation), and reclamation is determined by this office to have been successful, the annual fee for the site shall be reduced so that the reclaimed acres are not used in determining the amount of annual fees due.

NOTE: Interim reclamation must meet the same requirements as final reclamation for soil depths, revegetation, etc. as final reclamation.

The amount of financial assurance may also be reduced for the acres reclaimed on an interim basis. The acres certified by this office as reclaimed on an interim basis shall be removed from financial assurance requirements. Financial assurance shall continue at this level for any acreage reclaimed on an interim basis until the acres are again disturbed. At that point, the affected acres will be added to the total “unreclaimed acres” for the site for the purpose of determining both the annual fees due and the level of Financial Assurance needed.

The operator shall notify the regulatory authority prior to disturbing the acres reclaimed on an interim basis. When an operator anticipates disturbing acreage certified as reclaimed, such acres should be included both in the annual report and the annual fee calculation for the upcoming year.

Final Reclamation--Water Retention

A reclamation plan that identifies a water retention area as a finished feature of a reclaimed mining site shall also be required to include a detailed plan of the type, thickness and permeability of the material that will exist between the bedrock and the water. Such requirement is required to assure the impounded water, possibly polluted with pesticides, herbicides, fertilizer or other contaminants, will be less likely to negatively impact groundwater. It is not recommended that water retention areas be routinely incorporated into reclamation plans unless they are needed to support wildlife or are an integral part of the reclamation plan.

Final Reclamation--Reduction of Steep Slopes and Vertical Rock Walls

Section 22-230(a)(4)a. and Wis. Admin. Code NR § 135.19(4)(a) both require that nonmetallic mining reclamation plans include a description of the methods that will be used to reduce the height of vertical walls.

In an effort to uniformly apply the requirements of this ordinance for the mutual benefit of operators, landowners, and the general public, Vernon County is providing the following guidelines for all slopes, including rock walls which are vertical, nearly vertical, or steeper than 3:1 (H:V), and made up of consolidated or unconsolidated material. If the wall or slope exceeds 20 feet in height, it may need to be determined stable through an engineering analysis, unless all of the following apply:

- 1) The wall is benched at no greater than 20-foot heights, or
- 2) It has material banked against the toe to bring the height down to no more than 20 feet, and
- 3) The wall is varied in appearance (not sheer and straight), and
- 4) The wall blends in with the surrounding area, and
- 5) The wall seems stable does not pose a safety risk, as determined by the Regulatory Authority, and
- 6) The wall does not increase the erosion potential of the site, and
- 7) The area where the wall is located is clearly identified on a map or drawing of the site.

If an operator can meet the requirements of items 1 through 7 listed above, it may be possible to consider the rock walls or slopes of consolidated or unconsolidated material steeper than 3:1 (H:V), a unique formation or wildlife habitat area and the requirement to have an engineering analysis done may be waived by the county.

STANDARDS

Soil Depth

Soil shall be provided for reclamation to achieve the soil depth needed to achieve the post-mining land use in the reclamation plan. It is the operators’ responsibility to propose the depth of soil

needed, and provide the reasoning for that depth. The County shall determine whether the proposed soil depth is adequate for the post-mining land use.

A mining site that does not have the needed topsoil and/or subsoil on-site at the time of the annual inspection may have the amount of their financial assurance increased to cover the cost of purchasing, hauling and grading enough soil to meet the minimum requirements.

PL566 Flood Control Structures

Grading, excavating and related earthwork conducted to restore, repair or reconstruct a PL566 flood control structure are exempt from the requirements of this article if:

- (1) The person or department responsible for the project is required by state or federal regulations to prevent erosion and to fully reclaim all areas affected by the project. Affected areas include, but are not limited to, the PL566 structure, adjoining earthwork considered vital to the integrity of the structure and any off-site borrow areas.
- (2) Information on the project, which may include the time needed to complete the project and reclamation, erosion control plans and verification of state or federal reclamation requirements, is made available to the regulatory authority, upon request.

FINANCIAL ASSURANCE

Determining the Amount of Financial Assurance

The Regulatory Authority has the responsibility of making the final determination on the amount of Financial Assurance required for each nonmetallic mining site. Financial Assurance shall be adjusted whenever the Regulatory Authority deems it necessary, but usually not more frequently than once annually per site.

At the regularly scheduled monthly meeting of the Land Conservation Committee on February 8, 2007, a motion was made and passed setting the financial assurance amount for reclaiming nonmetallic mines at \$4,000 an acre, based on information received from operators, committee members, and increases in the price of gas and materials over the last few years. This per-acre cost is the estimated average cost to reclaim one acre of land disturbed by mining. Additionally, a nonmetallic mining site with a unique feature, such as a high-capacity well, will be required to include the cost for well closure in its financial assurance calculation.

The regulatory authority may consider reducing the per-acre amount if the operator proves that sufficient soil exists within the acres permitted for mining to complete reclamation. Any decision to increase or reduce the financial assurance rate rests solely with the Regulatory Authority.

Financial Assurance Standardized forms

The use of Vernon County standardized forms for Financial Assurance is required. Standardized forms for Vernon County currently include:

- Nonmetallic Mining Reclamation Irrevocable Letter of Credit
- Nonmetallic Mining Reclamation Performance Bond
- Nonmetallic Mining Reclamation Irrevocable Escrow Agreement

If one of the forms of financial assurance listed above is submitted to the Regulatory Authority, it must be on the county's form. Financial Assurance must be non-lapsing, and payable only to The Vernon County Land & Water Conservation Department. All other requirements for Financial Assurance as stated in this article and Chapter NR135 of the Wisconsin Administrative Code still apply.

DEFINITIONS

Inactive Mine

Wis. Admin. Code NR ch. 135 does not provide a definition for the term "inactive" as it applies to nonmetallic mining. Wis. Admin. Code NR ch. 135 does, however, state that a county ordinance "may establish annual reduced fees for nonmetallic mines in which nonmetallic mining has not taken place in the previous calendar year" (Wis. Admin. Code NR § 135.39(5)(e)).

The county, in an effort to achieve consistency with all operators affected by this article, has defined the term "inactive" as it applies to nonmetallic mining sites.

If all of the following statements regarding your nonmetallic mining site are true, your site may be considered inactive.

- (1) The operator holds a valid nonmetallic mining reclamation permit for the site.
- (2) The nonmetallic mining site has not been considered active at any time since January 1, 2000. (If an active fee has been paid for the site since July 2001, the site cannot now be considered inactive.)
- (3) No mining activity has taken place at the site during the last calendar year. Mining activity may include, but is not limited to:
 - a. The removal of stockpiled material as it currently exists within a nonmetallic mining site or in an area contiguous to the mining site;
 - b. Stockpiling of materials within the site or in an area contiguous to the site;
 - c. Blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals (i.e., mixing salt and limestone) within the site or in an area contiguous to the site;
 - d. Use of any portion of the site to store, park, repair or run machinery that is used in the mining process;
 - e. Interim or final reclamation work (grading, spreading soil or mulch, seeding, installing or removing erosion control devices, etc.);
 - f. Blasting;
 - g. Grading;
 - h. Crushing;
 - i. Screening;
 - j. Scalping or removing overburden;
 - k. Dewatering;
 - l. Hauling or access road work or repair;
 - m. Any other process carried out that is related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the site.
- (4) It is not anticipated that such nonmetallic mining site, or any area contiguous to the site, will be used in the upcoming year for any mining activity (see list under subsection (3)).

Any site which meets the definition of the term "inactive mine" may be assessed a reduced annual fee for each year the site qualifies as an inactive mining site. The reduced annual fee for a mining site shall be 25 percent of the annual fee due for an active mine of the same size*.

* The department of natural resources' share of the annual fee for an inactive mine of any size shall be \$15.00. The county's share shall be 25 percent of the annual fee for the same size active mine, as shown in the applicable table set forth in this appendix.

Under no circumstances shall the county be held liable for the financial costs to reclaim a nonmetallic mining site, nor shall the county be held liable for the safety of any person or animal within or near a nonmetallic mining site, nor shall the county be held liable for any misinterpretation or inadequacy of this article or Wis. Admin. Code NR ch. 135.

(Ord. of 2-27-2003, app. A)

Secs. 22-251--22-280. Reserved.