

General Code of Ordinances for Marathon County Chapter 21 - Nonmetallic Mining Reclamation Code



Approved by Marathon County
Environmental Resources
Committee November 7, 2019

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TITLE 1 TITLE, PURPOSE, AND SCOPE	1
Chapter 21.101 General	1
Section 21.101.01 Title	1
Section 21.101.02 Authority	1
Section 21.101.03 Purpose and Scope	1
Section 21.101.04 Applicability	1
Section 21.101.05 Exempt Activities	1
TITLE 2 STANDARDS	2
Chapter 21.201 Standards	2
Section 21.201.01 Reclamation Standards.....	2
TITLE 3 PERMITTING	5
Chapter 21.301 Permitting.....	5
Section 21.301.01 Permits Required	5
Section 21.301.02 Local Transportation Related Mines	5
Section 21.301.03 Reclamation Permit Application Requirements.....	5
Section 21.301.04 Reclamation Plan	6
Section 21.301.05 Permit Conditions	8
Section 21.301.06 Public Notice and Right of Hearing	9
Section 21.301.07 Permit Decisions and Appeal Process.....	9
TITLE 5 FINANCIAL ASSURANCE	12
Chapter 21.501 Financial Assurance.....	12
Section 21.501.01 Notification.....	12
Section 21.501.02 Methods of Financial Assurance	12
TITLE 6 ADMINISTRATION AND ENFORCEMENT	14
Chapter 21.601 Administration and Enforcement.....	14
Section 21.601.01 Inspections.....	14
Section 21.601.02 Enforcement	14
Section 21.601.03 Penalties.....	15
Section 21.601.04 Government Immunity.....	15
Chapter 21.602 Reporting	15
Section 21.602.01 Annual Operator Reporting	15
TITLE 7 DEFINITIONS	16
Chapter 21.701 General Definitions.....	16
Section 21.701.01 Definitions	16

Title 1: TITLE, PURPOSE AND SCOPE

Chapter 21.101

General

Section 21.101.01 TITLE

This Chapter shall be known and cited as the Marathon County Nonmetallic Mining Reclamation Code.

Section 21.101.02 AUTHORITY

AUTHORITY. In accordance with the provisions of Wis. Stats. 295.13 and 59.02, 59.692, and 59.694 and Wisconsin Administrative Code NR135, the County Board enacts this Chapter.

Section 21.101.03 PURPOSE AND SCOPE

The purpose of this Chapter is to require reclamation of nonmetallic mining sites. This Chapter establishes standards for reclaiming nonmetallic mining sites, sets out nonmetallic mining reclamation permit requirements for reclamation standards, defines procedures and requirements applicable to mines subject to this Chapter, and defines procedures for administering nonmetallic mining reclamation.

Section 21.101.04 APPLICABILITY

- A. This Chapter applies to all nonmetallic mining sites within the County, except as exempted in Section [21.101.05](#) of this Code or are located at a site or that portion of a site within those municipalities with a nonmetallic mining reclamation ordinance adopted pursuant to Wisconsin Administrative Code NR 135.32(2).
- B. This Nonmetallic Mining Reclamation Ordinance shall take effect January 1, 2020. All prior nonmetallic mining regulations and amendments thereto are hereby repealed, except to the extent where there is a pre-existing violation.

Section 21.101.05 EXEMPT ACTIVITIES This Chapter does not apply to the following activities however, other County Ordinances or State Statutes may apply:

- A. Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Department of Natural Resources (DNR) under Wis. Stats., 30.19, 30.195 or 30.20 and complies with Wisconsin Administrative Code NR340.
- B. Excavations subject to the permit and reclamation requirements of Wis. Stats., 30.30 or 30.31,
- C. Excavations or grading by a person solely for domestic or farm use at the person's residence or farm.
- D. Excavation or grading conducted for the construction, re-construction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
- E. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- F. Excavations for building construction purposes conducted on the building site
- G. Nonmetallic mining at a nonmetallic mining site where less than one acre of total affected acreage occurs over the life of the mine.
- H. Any mining operation, the reclamation of which is required in a permit obtained under, Wis. Stats., 293 or Wis. Stats., 295.

- I. Any activities required to prepare, operate or close a solid waste or hazardous waste disposal facility under Wis. Stats., 289 or 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 Code apply to activities related to solid or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering, or constructing berms, dikes, or roads.
- J. 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 Department of Transportation (DOT) concerning the restoration of the nonmetallic mining site.
 - 1. The exemption provided in this paragraph only applies to a nonmetallic mining operation with limited purpose and duration where the DOT actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the DOT contract for construction of a specific transportation project.
- K. If a nonmetallic mining site covered under this Section is used to concurrently supply materials for projects unrelated to the DOT project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under DOT contract and supervision. Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.

Title 2: STANDARDS

Chapter 21.201

Standards

Section 21.201.01 RECLAMATION STANDARDS

Reclamation Standards. All nonmetallic mining sites subject to this Code shall be reclaimed in conformance with the standards contained below:

- A. **General Standards.**
 - 1. Refuse and Other Solid Wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid waste shall be disposed of in accordance with applicable rules of the (WDNR) adopted pursuant to Wis. Stats., 289 and 291.
 - 2. Area Disturbed and Contemporaneous Reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for reclamation of portions of the site while nonmetallic mining continues on other portions of the site.
 - 3. Public Health Safety and Welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health safety and welfare.
 - 4. Habitat Restoration. When the land use required by the reclamation plan approved pursuant to this Code 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.
- B. **Compliance with Environmental Regulations.** Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning or land use control.
- C. **Surface Water and Wetlands Protection.** Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the DNR water quality standards for surface waters and wetlands contained in Wisconsin Administrative Code NR 102 to NR 105. Before disturbing

the surface of a nonmetallic mining site and removal of 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 Code. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

D. Groundwater Protection.

1. Groundwater Quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that would result in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
2. Groundwater Quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Wisconsin Administrative Code NR 140 to be exceeded at the point of standards application.

E. Topsoil Management.

1. Removal. Topsoil and topsoil substitute shall be provided as specified in the reclamation plan approved pursuant to this Code in order to achieve reclamation to the approved post mining land use. Removal of on-site topsoil and topsoil substitute material, when specified in the reclamation plan, shall be performed prior to any mining activity associated with any specific phase of the mining operation.
2. Volume. The operator shall obtain the volume required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this Code.
3. Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this Code, 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 disturbances or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

F. Final Grading and Slopes.

1. All areas affected by mining shall be addressed in the reclamation plan approved pursuant to this Code to provide that a stable and safe condition consistent with the post mining land use is achieved. The reclamation plan may:
 - a. Designate high walls or other un-mined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or
 - b. 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.
 - c. For slopes designated under b. the Department may require that either a site specific engineering analysis performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope; or the operator shall perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post mine land use specified in the post mine land use will not be adversely affected.
2. Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline unless found acceptable through one or more of the following: alternative requirements are approved under Section [21.201.01](#) of this Code, steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan, or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

3. When the approved post-mining land use includes a body of water the approved final grade at the edge of a body of water shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.
- G. **Topsoil Redistribution for Reclamation.** Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this Code in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.
- H. **Revegetation and Site Stabilization.** Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this Code, 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.
- I. **Assessing Completion of Successful Reclamation.**
1. The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this Code. Criteria to evaluate reclamation success shall be quantifiable.
 2. Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - a. On-site inspections by Department staff.
 - b. Reports presenting results obtained during reclamation evaluations including summarized data on revegetation, photo documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
 - c. A combination of inspections or reports.
 3. In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success as further described in this Section.
 4. Revegetation success may be determined by:
 - a. Comparison to an appropriate reference area.
 - b. Comparison to baseline data acquired at the mining site prior to its being affected by mining.
 - c. Comparison to an approved alternate technical standard.
 5. Revegetation using a variety of plants indigenous to the area is favored.
- J. **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 [21.501](#) of this Code, is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.
- K. **Maintenance.** During the period of site reclamation, after the operator has stated that reclamation is complete, but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this Code.

Title 3: PERMITTING

Chapter 21.301

Permitting

Section 21.301.01 PERMITS REQUIRED

No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to this Code, unless the activity is specifically exempted in Section [21.101.05](#) of this Code.

Section 21.301.02 LOCAL TRANSPORTATION RELATED MINES

- A. **Borrow Sites for Local Transportation Projects.** A permit shall be issued under this Section for any nonmetallic mine that meets the following conditions:
1. The mine will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months.
 2. The mine 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.
 3. The mine is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the DOT concerning the restoration of nonmetallic mining sites.
 4. The mine is not a commercial source of nonmetallic minerals.
 5. Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any, and;
 6. Is not otherwise exempt from the requirements of Section [21.101.05](#) of this Code.
- B. **Application Requirements** The applicant shall provide the following:
1. A copy of the contract which outlines the terms and conditions of the reclamation of the proposed borrow site. The contractual provisions incorporating requirements of DOT will be in lieu of a reclamation plan and in lieu of financial assurance requirements.
 2. Evidence to show that the borrow site and its reclamation will comply with applicable zoning requirements if any.
 3. The annual fees under Section [21.401.01](#) of this Code, shall apply. No fees will be charged for plan review or expedited plan review.
- C. **Public Notice and Hearing.** The public notice and hearing provisions of Section [21.301.05](#) of this Code, do not apply to permits issued under this Section.
- D. **Permit Issuance.** A permit pursuant to this Section shall be issued within 7 working days of receipt of a complete application.
- E. **Multiple Use of Borrow Site.** If the borrow site is used to concurrently supply materials for other than the local transportation project, the permitting in this Section still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with the DOT requirements.
- F. **Annual Report.** Notwithstanding Wisconsin Administrative Code NR 135.36, the operator of a borrow site under this Section is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

Section 21.301.03 RECLAMATION PERMIT APPLICATION REQUIREMENTS

- A. **Application Required.** No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to this Code unless the activity is specifically exempted in Section [21.101.05](#) of this Code
- B. **Required Submittal.** Prior to beginning mining operations, all operators of nonmetallic mining sites shall apply for and obtain a Marathon County Nonmetallic Mining Reclamation permit. All applications submitted under this Section shall be submitted to the Department and be accompanied by, but not limited to, the following:
1. Marathon County Reclamation Permit Application

2. The Department's plan review fee
 3. The first year's annual fee, as required by Section [21.401.01](#) of this Code and Wisconsin Administrative Code NR 135.39
 4. A reclamation plan conforming to Wisconsin Administrative Code NR 135.19 and Section [21.301.04](#) of this Code.
 5. A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by Section [21.501.01](#) of this Code and Wisconsin Administrative Code NR 135.40 upon granting of the reclamation permit and before mining begins.
 6. To avoid duplication, the permit application and submittals required by this Section may, by reference, incorporate existing plans or materials that meet the requirements of this Code
- C. **Application Contents.** All applications submitted under this Code shall include, but not limited to, the following:
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 who is the operator.
 5. A certification by the operator of his or her intent to comply with the nonmetallic mining reclamation standards as outlined in this Code.

Section 21.301.04 RECLAMATION PLAN

- A. **Plan Required.** An operator who conducts or plans to conduct nonmetallic mining shall submit to the Department a reclamation plan that meets the requirements of this Section and complies with the Standards of this Code. The reclamation plan shall information sufficient to describe the existing natural and physical conditions of the site including:
1. Site Information. The name and address of the operator.
 2. Nature of Deposit. A description of the nature of the deposit and the mining methods that will be used to extract and process the material including the thickness and type of topsoil.
 3. Groundwater. The elevation of observed or estimated groundwater as determined by existing hydrogeological information, in relation to the site elevation reference point. In specific instances where the existing hydrogeological information is insufficient for purposes of the reclamation plan, the applicant may be required to supplement such information with the opinion of a professional geologist or hydrologist.
 4. Biological Resources. Information available to the mine operator on the biological resources, plant communities and wildlife use at and adjacent to the proposed or operating mine site.
 5. Map. A general location map which shall be drawn at a scale of no less than 1 inch equals 200 feet and shall include the following:
 - a. Property Boundary (Parcel Lines). All property boundaries of the land(s) where the mine site is to be located shall be shown.
 - b. Mine Site Boundary. The boundaries of the mine site that will be permitted shall be shown. If the site is to be mined in phases, the boundaries of each phase shall also be shown.
 - c. Nonmetallic Mineral Deposit. The areal extent of the mineral deposit shall be shown.
 - d. Existing topography of affected lands at contour intervals no wider than ten (10) feet.
 - e. Location and names of all streams, lakes, other water features and roads on or within 300 feet of the project site.
 - f. Location of all man made features on or adjacent to the site and the purpose for which each man made feature and the adjoining land is used.
Areas of previous excavations, stockpiles, sediment basins, wash plants or other land previously affected by nonmetallic mining on the site.

6. Reclamation Measures. All horizontal and vertical measurements shall be referenced to a permanent reference point. The reclamation plan, including maps, information about the site, a description of the proposed reclamation and post mine land use including methods and procedures to be used and a proposed timetable for completion of various stages of reclamation of the nonmetallic mining site, including provisions for interim reclamation, shall be provided as follows:
 - a. Two printed or one electronic copy of a plan of the proposed reclamation, including erosion control practices necessary during reclamation, final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures including a description of anticipated topography, water impoundments, artificial lakes and anticipated post mining land use. Site specific engineering analysis performed by a registered professional engineer as provided in Section [21.201.01 \(E\)](#) of this Code may be required for slopes steeper than 3 foot horizontal: 1 foot vertical.
 - b. Description of the volume of topsoil or topsoil substitute and other earth materials that will be necessary to complete the proposed reclamation, and the methods for stripping, storage, stabilization, reapplication and conservation methods that will be used during replacement. If off-site material will be used in reclamation of the site, include a description of the source, nature and volume of material
 - c. Description of plans for disposition of manmade features and related facilities after cessation of mining unless they serve to support the post mine land use.
 - d. The estimated cost of reclamation for each stage of the project or the entire site if staging is not planned.
 - e. A seeding plan which shall include methods of seed bed preparation, seeding rates, mulching, netting and/or other techniques needed to accomplish soil and slope stabilization.
 - f. A timetable of the commencement, duration, and cessation of reclamation activities.
 - g. Quantifiable standards for revegetation adequate to show that a suitable stand of vegetation has been established which will support the post mine land use. Standards for revegetation may be based on the percent of vegetative cover, productivity, plant density, diversity or other applicable measures.
 - h. A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses.
7. 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 local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with any applicable state, local or federal laws in effect at the time the plan is submitted.
 - b. A statement from the applicable planning or zoning authority that the proposed post mine land use is consistent with zoning and land use plans in effect at the time the application is submitted, unless a change in the zoning or land use plan is proposed.
 - c. Land used for nonmetallic mineral extraction in areas zoned under a farmland preservation zoning ordinance pursuant to subchapter III Wis.Stats.91, shall be restored to agricultural use.
8. Criteria for Successful Reclamation. The reclamation plan shall contain criteria for assuring successful reclamation in accordance with Section [21.201.01 \(H\)](#) of this Code.
9. Alternate Requirements.
 - a. Criteria. The Department may approve an alternate requirement to the reclamation standards established in this Code if the operator demonstrates and the Department finds that all of the following criteria are met:
 - 1) The nonmetallic mining site, the surrounding property or the mining plan or reclamation plan has a unique characteristic which requires an alternate requirement.
 - 2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternate requirement is approved.

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

b. Procedures.

- 1) An operator who requests an alternate requirement shall submit the request in writing as required in this Section.
- 2) The alternate requirement shall be approved or disapproved as provided in this Code. Approval or disapproval shall be in writing and shall contain documentation of the reasons why the alternate requirement was or was not approved.
- 3) A request for an alternate requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.
- 4) An opportunity for a public informational hearing pursuant to this Code prior to the Department's action on a request for an alternate requirement may be provided.

10. Certification of Reclamation Plan

The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. The landowner or lessor, if different from the operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation. The certification shall be binding on the land owner's or operator's heirs and assignees or the certification shall be recorded with the register of deeds to inform subsequent owners of the existence of the reclamation plan.

11. Other Information. The Department may require the submittal of such other information as may be necessary to determine the feasibility of the proposed reclamation.

12. Approval. The Department shall approve, approve conditionally, or deny the reclamation plan in writing.

Section 21.301.05 PERMIT CONDITIONS

A. Conditions Applied to All Permits.

1. Right of Access. The filing of an application shall grant the Department the right of access onto the site and contiguous lands owned or leased by the applicant for any purposes relative to this Code.
2. Lease. A signed copy of the lease or a letter signed by the owner(s) of record which authorizes the operator to enter upon the lessor's land for the purpose of mining as defined in this Code. The expiration date of the lease or agreement shall clearly be indicated therein.
3. Boundary Staking. Prior to commencing nonmetallic mining operations on a site, the sites permitted boundary (s) shall be staked or otherwise marked. The operator shall notify the Department, a minimum of 2 working days prior to commencing operations, that the site is staked in accordance with this Section. Stakes shall be made of steel, fiberglass or other material acceptable to the Department. Stakes may be removed after reclamation is completed and accepted. Painted wood lath may be used for operations of one year or less. Staking may be waived with Department approval if an operation boundary is the same as an existing fence line or other easily identifiable feature.
4. Conflicts with Other Regulations. The operator shall obtain all applicable local, state and federal permits and/or approvals and copies of these permits and/or approvals must be provided to the Department.
5. Compliance with Reclamation. The operator shall comply with contemporaneous and final reclamation plans for the site.
6. Notification of Completion of Reclamation. The operator shall notify the Department in writing that interim or final reclamation has been completed. The notice may include documentation that the quantifiable standard for revegetation contained in the reclamation plan has been met. All stages within a site shall also comply with the notification requirements above. When a stage is complete, the operator shall notify the Department for approval of the reclamation before entering the next stage.
7. Solid and Hazardous Waste. Unless permitted under State and/or Federal authority, no solid or hazardous waste shall be stored, buried, or deposited in or on any nonmetallic mining site.

8. Other Conditions. The Department may apply such other requirements as are reasonably necessary to ensure progressive and final reclamation in a manner consistent with this Code and to limit environmental pollution including but not limited to the financial assurance provisions of this Code.

Section 21.301.06 PUBLIC NOTICE AND RIGHT OF HEARING

A. Public Notice.

1. The Department shall publish a public notice of application within 30 calendar days of the receipt of a complete application for a nonmetallic mine reclamation permit.
2. The notice shall be published as a Class 1 notice pursuant to Wis. Stats., 985.07 (1). The notice shall contain the following:
 - a. A description of the mining and reclamation planned at the proposed site.
 - b. The opportunity for a public hearing pursuant to this Section.
 - c. The location at which the public may review the application and all supporting materials including the reclamation plan.
3. Copies of the notice shall be forwarded by the Department to the county or applicable municipal zoning board, county and applicable local planning organization, the clerk of the municipality in which the proposed site is located, the land conservation officer and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the proposed site is located.

B. Public Hearing.

1. County Zoning. (Sites Located in Towns under County Zoning Jurisdiction) If a public hearing is required for a Conditional Use Permit under Chapter 17 of the General Code of Ordinances, an opportunity shall be provided to give testimony on reclamation related matters. The Department shall consider the reclamation related testimony in deciding on a permit application pursuant to this Code.
2. Reclamation Public Hearing. (Sites located in Towns or municipalities where there was not an opportunity for the Department to receive testimony on reclamation matters) If there was not an opportunity for the Department to take testimony under Section [21.301.05 \(B\) \(1\) \(a\)](#) above an opportunity for a public informational hearing maybe provided as follows: Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of a parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The request must be made within 30 calendar days of the date of the public notice specified in Section [21.301.05 \(A\) \(1\)](#) of this Code. The hearing shall be held no sooner than 30 calendar days or later than 60 calendar 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. The subject matter and testimony at this informational hearing, if it is held separately from any zoning related hearing, shall be limited to the reclamation of the proposed nonmetallic mine site.

Section 21.301.07 PERMIT DECISIONS AND APPEAL PROCESS

A. Notice to Clerk: Upon receipt of a complete permit application or appeal, the Department shall notify by mail the clerk of the town in which the operation is located.

B. Granting or Denial.

1. Permits shall be granted or denied no sooner than 30 calendar days nor later than 90 calendar days following receipt of a complete reclamation permit application and reclamation plan, unless a public hearing is held per Section [21.301.05 \(B\) \(1\)](#). If a public hearing is held, the Department shall issue the reclamation permit or deny the permit no later than 60 calendar days after completing the public hearing. Permits will be granted where the Department finds that the provisions of this Code and the relevant standards have been met, one copy of all plans will be stamped "Approved" and returned to the applicant at the time of permit issuance. Permits shall be denied where the provisions of this Code have not been met or if the applicant has failed or continues to fail to comply with the requirements as outlined in Wisconsin Administrative Code NR135.22.

2. Permits shall include general or site specific conditions if necessary, to comply with this Code. Any condition to a permit shall be limited to those items regulated by this Code. A condition of all permits issued for new mines will be that financial assurance will be obtained prior to beginning mining.

C. Expedited Permitting.

- a. Any person may request an expedited permit with the Department. The request shall state the need for the expedited review, the date by which the expedited review is requested and a payment of the fee under Section [21.401.01](#) of this Code.
- b. Any person may request an expedited review if the reclamation permit is to perform services under contract with a municipality. The request shall state the need for expedited review, include a copy of the applicable Sections of the contract, the date by which the expedited review is requested and a payment of the fee under Section [21.401.01](#) of this Code.
- c. Following receipt of a request under this Section, the Department 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 shall be returned. This review process may not waive the requirements of this Code for a public notice and hearing.
- d. The Department is not obligated to act upon a request for Expedited Permitting under this Section by a specific date.

D. Cooperative Issuance by Multiple Authorities.

If more than one regulatory authority has jurisdiction over a single nonmetallic mining site, the regulatory authorities shall cooperatively issue a single reclamation permit for the nonmetallic mining site.

E. Appeals of Permit Decisions or Administrative Decisions.

1. Any person who meets the requirements of Wis. Stats., 227.42 (1), may obtain a contested case hearing under Wis. Stats., 68.11, on a Department decision to issue, deny, or modify a nonmetallic mine reclamation permit with a request in writing within 30 calendar days of notice to such person of the Department's decision.
 - a. The Board of Adjustment as established under Section 17.801.03 of the General Code of Ordinances for Marathon County shall serve as the impartial decision maker and shall conduct the hearing pursuant to Wis. Stats., 68.11 (2).
 - b. The Board of Adjustment or a person delegated by the Board of Adjustment shall provide a record of the hearing pursuant to Wis. Stats., 68.11 (3).
 - c. Within 20 calendar days of completion of a hearing conducted under a. and the filing of briefs, if any, the Board shall mail or deliver to the appellant its written determination stating the reasons therefore. Such determination shall be a final determination.
 - d. Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 calendar days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.
 - e. If review is sought of a final determination, the record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at the requester's expense. If the person seeking review establishes impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the county and the person seeking review shall be provided a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.

F. Permit Duration.

1. A nonmetallic mine reclamation permit issued under this Code shall last through the operation and reclamation as described in the approved reclamation plan of the mining site, unless suspended or revoked pursuant to Section [21.301.06 \(E\)](#).
2. 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 [21.301.06 \(G\)](#).

G. Permit Termination. When all final reclamation required by a reclamation plan conforming to Section [21.301.04](#) and required by this Code is certified as complete pursuant to Section [21.301.04 \(9\)](#), the Department shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

H. Permit Suspension and Revocation.

1. The Department may suspend or revoke a nonmetallic mining permit issued under this Code if the operator has failed to:
 - a. Submit satisfactory reclamation plan within the required timeframes.
 - b. Submit or maintain financial assurance as required.
 - c. Follow the approved reclamation plan on a repetitive or significant basis.
2. Suspension. If the Department makes any of the findings in Section [21.301.06 \(E\) \(1\)](#) of this Code, it may suspend a nonmetallic mining reclamation permit for up to 30 calendar 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 Department.
3. Revocation. If the Department makes any findings in Section [21.301.06 \(E\) \(1\)](#) of this Code, it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided as required by this Code.

I. Permit Modification.

1. If nonmetallic mining reclamation permit is found by the Department that, due to changing conditions, the nonmetallic mining site no longer is in compliance with this Code it shall issue an order modifying the permit in accordance with Section [21.601.02](#) of this Code. This modifying order may require the operator to amend or submit new application information, financial assurance or other information to ensure compliance with this Code.
2. If operator of any nonmetallic mine that holds a reclamation permit issued under this Code desires to modify such permit or reclamation plan approved under this Code, it may request such modification by submitting a written application for such modification to the Department. The application for permit or plan modification shall be acted on using the standards and procedures of this Code.

J. Permit Transfer. A nonmetallic mining permit may be transferred to a new operator upon submittal to the Department all of the following:

1. The new operator posts financial assurance pursuant to Section [21.501](#) of this Code. The previous operator shall maintain financial assurance until the new operator has received approval.
2. A written, witnessed certification by the new permit holder that all conditions of the permit will be complied with.

Title 4: FEES

Chapter 21.401

Fees

Section 21.401.01 ANNUAL FEE

- A. **Annual Fees.** Fees shall be assessed for all un-reclaimed acres of a nonmetallic mine site as follows:
1. An application for a permit shall be accompanied by a fee based on each acre that will be impacted by mining. On an annual basis, permitted mines, shall be assessed a fee for each un-reclaimed acre not released pursuant to Section [21.201.01](#) of this Code. Acres shall be rounded to the nearest whole number for calculating fees.
 2. Department of Natural Resources Fee. In addition to the fee listed in Section [21.401.01 \(A\) \(1\)](#) of this Code, the operator shall submit to the Department an annual fee which shall be paid to the DNR pursuant to Wisconsin Administrative Codes NR 135.39 (3) (b) Table 1. and NR 135.39 (6) (b).
 3. Fees shall be assessed pursuant to the Department fee schedule approved by the Environmental Resource Committee and in compliance with Wisconsin Administrative NR 135.39 (4).
 4. Fees for Local Transportation Projects Permitted Under Wisconsin Administrative Code NR135.23 shall be compliant with Wisconsin Administrative Code NR135.23(1) (g)
 5. Permit fees are not refundable after a permit has been issued.
 6. If the Department determines that areas within a mining site have been successfully reclaimed on an interim basis in accordance with the reclamation plan, the Department shall waive annual acreage fees for those areas.

Section 21.401.02 PUBLIC NOTICE AND HEARING FEES

All requests for a contested case hearing before the County Zoning Board of Adjustment shall be accompanied by a fee as set forth in Chapter 17 of the Marathon County General Code of Ordinances – Zoning Code. This fee is in addition to any other fee required by this Code

Title 5: FINANCIAL ASSURANCE

Chapter 21.501

Financial Assurance

Section 21.501.01 NOTIFICATION

Notification. Following approval of the permit, and as a condition of the permit, except for governmental units and local transportation projects permitted under Section [21.301.02](#) of this Code, the Department shall require proof of financial assurance to be filed with the Department equal to the estimated cost of fulfilling reclamation. The Department shall determine the required financial assurance amount of the project site and shall notify the applicant. Upon notification of the required financial assurance amount by the Department, but prior to commencing nonmetallic mining, the operator shall file with the Department said financial assurance conditioned on faithful performance of all requirements of this Code, and the permit. Upon notification by the Department of financial assurance receipt or deposit approval and conformance with permit conditions, the operator may commence nonmetallic mining and reclamation operations.

Section 21.501.02 METHODS OF FINANCIAL ASSURANCE

- A. **Form.** Financial assurance shall be provided by the operator and shall be by bond or an alternate financial assurance. Financial assurance shall be payable to Marathon County, Wisconsin. Nonmetallic mining shall be limited to the phases which have financial assurance approved for them.
- B. **Cancellation.** All financial assurance shall provide that the financial assurance shall not be canceled by the surety, except after not less than 90 day notice to the 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 must deliver to the Department a replacement form of financial assurance which in absence of all nonmetallic mining shall cease.

- C. **Acreage Covered.** Financial assurance may be provided to the Department but in no instance shall the financial assurance be for an area less than ½ acre. Nonmetallic mining shall be limited to the areas which have financial assurance approved for them.
- D. **Bonds.** Bonds shall be issued by a surety company licensed to do business in this state. At the option of the operator, a performance bond or a forfeiture bond may be filed. Surety companies may have the opportunity to complete the reclamation in lieu of cash payment to the Department. The bond shall be payable to "Marathon County, Wisconsin".
- E. **Alternate Financial Assurance.** An operator may deposit cash, irrevocable letters of credit, irrevocable trusts, established escrow accounts, negotiable certificates of deposit, and negotiable government securities with the Department in lieu of a bond or may demonstrate financial responsibility by meeting net worth requirements as outlined in Wisconsin Administrative Code NR 135.40(13). Certificates of Deposit shall be automatically renewed or replaced with an alternate security before the maturity date. Any interest earned by the financial assurance will be paid to the operator.
- F. **Re-evaluation.** The Department shall review periodically the amount of the mine site's financial assurance to assure it meets outstanding reclamation costs. Reclaimed acres may be released from the financial assurance and the amount of the financial assurance may be adjusted proportionately based upon the remaining un-reclaimed acres of the mine site.
- G. **Changing Methods of Financial Assurance.** The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to this Code. The operator shall give the Department at least 60 calendar day notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the Department.
- H. **Cancellation/Forfeiture.** Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90 calendar day notice to the Department in writing by registered or certified mail. Not less than 30 calendar days prior to the expiration of the 90 calendar day notice of cancellation, the operator shall deliver to the Department a replacement financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect. Financial assurance shall be forfeited if the permit is revoked per this Section and the appeals process has been completed or an operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.
- I. **Bankruptcy Notification.** The operator of a nonmetallic mining site shall notify the Department by certified mail of the commencement of voluntary or involuntary proceedings under bankruptcy Code, 11 USC, et seq., naming the operator as a debtor, within 10 working days of commencement of the proceeding.
- J. **Financial Assurance Release.** The Department shall release the operator's financial assurance if it finds, after inspection of the project site and review of documentation provided by the operator, that the operator has fully carried out and completed reclamation of the project site in accordance with the reclamation plan, and has otherwise complied with this Code. Completion of reclamation shall be determined pursuant to the procedures listed in Section [21.301.04](#) of this Code. The Department shall notify the operator in writing within 60 calendar days after site inspection whether or not the reclamation is complete for all or part of the mine or if weather conditions or snow cover make a determination impractical.
- K. **Financial Assurance on Multiple Projects.** Any operator who obtains a permit from the Department for two or more project 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 on each site. Any financial assurance so posted shall be in an amount equal to the estimated cost to the County for reclaiming all sites the operator has under project permits. When an operator elects to post a single financial assurance in lieu of separate financial assurance previously posted on individual sites the separate financial assurance shall not be released until the new financial assurance has been accepted by the Department.
- L. **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.
- M. **Net Worth Test.** An operator that meets the definition of "company" in Wis. Stats., 289.41 (1) (b) may use the net worth method of providing financial assurance. The operator shall submit information to

the Department in satisfaction of the net worth 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.

1. 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 ration in accordance with Wis. Stats., 289.41 (6)
 2. The Departments determination of the net worth test shall be in accordance with Wis. Stats., 289.41 (5).
 3. 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 ordinance.
- N. **Interim Reclamation Waiver.** If the Department determines that areas within a mining site have been successfully reclaimed on an interim basis in accordance with the reclamation plan, the Department may reduce/waive financial assurance requirements for those areas.

Title 6: ADMINISTRATION AND ENFORCEMENT

Chapter 21.601

Administration

Section 21.601.01 INSPECTIONS

- A. The Department administrator or designee may enter the premises of a nonmetallic mining site in the performance of their official duties or pursuant to a special inspection warrant issued under Wis. Stats., 66.0119, in order to inspect those premises and to ascertain compliance with this Code and permit or to investigate an alleged violation.
- B. Each active project site shall be inspected by Department personnel at least once annually to ensure that the site is in conformance with the operator's permit and shall make a report of the inspection. The report of the inspection may contain a map or diagram which illustrates the area that has been affected by nonmetallic mining, the area that has been reclaimed and the un-reclaimed area and shall document any activity that is inconsistent with the terms of the permit for the site. The operator shall be provided a copy of the information obtained during the inspection. The Department may, at its discretion, substitute the information obtained in this inspection for the annual operator reporting requirement contained in Section [21.602.01](#) of this Code provided the operator submits the certification specified in Section [21.602.01 \(A\)](#) of this Code to the Department within 30 days of receipt of the inspection report.
- C. The Department shall retain the inspection reports for a period of ten years after a permitted nonmetallic mining site has been determined to be closed and shall make the information available to the Department of Natural Resources upon request.
- D. The Department shall inspect a nonmetallic mining site for which an operator has submitted a report under Section [21.201.02 \(A\) \(6\)](#) of this Code, of the completion of reclamation or interim reclamation within 60 calendar days of receipt of the report and make a determination in writing. If it is determined that interim or final reclamation is complete, including revegetation meeting the quantifiable standard as specified in the reclamation plan approved under Section [21.301.04](#) of this Code, the Department shall issue the mine operator a written certification of completion.

Section 21.601.02 ENFORCEMENT

- A. **Enforcement Orders.** The Department may issue orders as set forth in Wis. Stats., 295.19 (1) (a), to enforce Subchapter I of Wis. Stats., 295, Wisconsin Administrative Code NR135, this Code, a permit issued pursuant to this Code or a reclamation plan required by Section [21.301](#) of this Code. A violation of this Code, an order or permit issued pursuant to this Code or a reclamation plan required by Section [21.301](#) of this Code, shall be considered a violation of Subchapter I of Wis. Stats., 295 and Wisconsin Administrative Code NR135.
- B. **Special Orders.** The Department 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 issued pursuant to Section [21.301](#)

of this Code, or directing an operator to immediately cease an activity regulated under Subchapter I of Wis. Stats., 295, Wisconsin Administrative Code NR 135 or this Code until the necessary plan approval is obtained.

- C. **Review of Orders.** A person holding a reclamation permit who is subject to an order pursuant to 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., 68.01, 68.03 (8) and (9), 68.06 and 68.10 (1) (b).
- D. **Citations.** Marathon County may issue a citation under Wis. Stats., 66.119 and Section [21.601](#) of this Code to collect forfeitures to enforce Subchapter I of Wis. Stats., 295, Wisconsin Administrative Code NR 135. A permit issued pursuant to this Code or a reclamation plan required by Section [21.301](#) and a permit issued under this Code. The issuance of a citation under this Section 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 Section.

Section 21.601.03 PENALTIES

Any person, firm or corporation who fails to comply with Subchapter I of Wis. Stats., 295, Wisconsin Administrative Code NR 135, and/or this Chapter shall be subject to the penalty provisions contained in Section 25.04 of the Marathon County General Code of Ordinances. Each day a violation exists or continues shall constitute a separate offense.

Section 21.601.04 GOVERNMENTAL IMMUNITY

In carrying out any of the provisions of this Code or in exercising any power or authority granted to them thereby, there shall be no personal liability upon the Department, its agents and employees.

Chapter 21.602

Reporting

Section 21.602.01 ANNUAL OPERATOR REPORTING

Operators shall submit an annual report for every nonmetallic mine site with a reclamation permit to the Department annually.

- A. The annual report shall cover the activities on unreclaimed acreage for the previous calendar year, and shall include the following:
 1. The name and mailing address of the operator.
 2. The parcel identification number of the nonmetallic mining site.
 3. The Nonmetallic Mine Reclamation Permit number assigned by Marathon County.
 4. The acreage currently affected by nonmetallic mining and not yet reclaimed.
 5. The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
 6. A plan, map or diagram, drawn to scale, accurately showing the acreage described in this Section.
 7. The following certification signed by the operator:

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

- B. Annual operator reports shall be submitted to the Department by the operator for all active and intermittent mining sites until nonmetallic mining reclamation at the site is certified complete pursuant to Section [21.301](#) of this Code.

Title 7: DEFINITIONS

Chapter 21.701

General

Section 21.701.01 DEFINITIONS

Alternate Requirement. Means an alternative to the reclamation standards of this Chapter.

Applicable Reclamation Ordinance. Means a nonmetallic mining reclamation ordinance, including this Code that applies to a particular nonmetallic mining site and complies with the requirements of this Code, Wisconsin Administrative Code NR 135 and subchapter I of Wis. Stats., 295, unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in sub. (20) (c) If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Wisconsin Administrative Code NR 135.

Board of Adjustment. The Body established under Wis. Stats., 59.694.

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

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.

Department. Marathon County Conservation, Planning, and Zoning Department.

Enlargement. Any vertical or horizontal increase beyond dimensions of the original application for the project site.

Environmental Pollution. The meaning in Wis. Stats., 295.11 (2).

Financial Assurance. A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in Section [21.501](#) of this Code and is sufficient to pay for reclamation activities required by this Code.

Highwall. A vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.

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. A person who is licensed as a professional geologist pursuant to Wis. Stats., 470.

Licensed Professional Hydrologist. A person who is licensed as a professional hydrologist pursuant to Wis. Stats. 470.

Modification. Any vertical or horizontal decrease within the dimensions of the original application for the project site.

Municipality. Has the meaning as defined in Wis. Stats., 299.01 (8).

Nonmetallic Mineral. A product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

Nonmetallic Mining (NMM). Operations or activities for the extraction from the earth of mineral aggregates and nonmetallic minerals for sale or use by the operator; including the 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. Also includes processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals including but not limited to stockpiling materials, blending mineral aggregates, blasting, grading, crushing, screening, scalping and dewatering.

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.

Nonmetallic Mining Reclamation or Reclamation. The rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved nonmetallic mining reclamation plan, including removal or reuse of nonmetallic mine refuse, grading of the nonmetallic mine 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. Waste soil, rock, mineral, and other natural site waste material resulting from a nonmetallic mine operation. Does not include marketable by-products resulting directly from or displaced by the nonmetallic mine operation.

Nonmetallic Mining Site, Project Site, or Site. All contiguous areas where a nonmetallic mining operation is proposed, present or conducted including all areas from which minerals are stored or processed that are in or contiguous to areas excavated for nonmetallic mining, areas where nonmetallic mining refuse is deposited, and areas affected by activities such as construction or improvement of private roads or haulage ways, areas where grading or regrading is necessary, areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, re-vegetation test plots, or channels for surface water diversion, are located. Does not include previously mined areas that were not used for nonmetallic mineral extraction after April 1, 1989 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads and areas previously mined but used after April 1, 1989 for non-mining activities such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining. .

Operator. Any person or business entity 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.

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

Registered Professional Engineer. A person who is registered as a professional engineer pursuant to Wis. Stats. 443.04.

Regulatory Authority. Means of the following:

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

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

(c) The Department of Natural Resources, in cases where a county mining reclamation program 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. The replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post mining land use and as required by the reclamation plan.

Solid Waste. Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or

contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Wis. Stats., or source material, special nuclear material or by-product material, as defined in Wis. Stats., 254.31 (1).

Topsoil. 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. 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.

Unreclaimed Acre or Unreclaimed Acres. Those unreclaimed areas in which nonmetallic mining has occurred after April 1, 1989 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under Section [21.201](#) Section [21.201.01\(H\)](#) of this Code and Wisconsin Administrative Code NR135.40 (7). Does not include: areas where reclamation has been completed and certified as reclaimed under Wisconsin Administrative Code NR 135.40 (7); areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after April 1, 1989; areas included in the approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining, and areas previously mined but used after April 1, 1989 for non-mining activity, such as stockpiling of materials used for industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining. .