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PART I - GENERAL

1.00 Title. Nonmetallic mining reclamation ordinance for *Ashland County*.

SECTION 2

2.00 Purpose. The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in ***Ashland County*** after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.

SECTION 3

3.00 Statutory Authority. This chapter is adopted under authority of **Section 295.13(1), Wisconsin Statutes**, Section NR 135.32, Wisconsin Administrative Code, and **59.51, Wisconsin Statutes.**

SECTION 4

4.00 Restrictions Adopted Under Other Authority. The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by Section 295.12(1)(a), Stats. and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.

SECTION 5

5.00 Interpretation. In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this chapter may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this chapter is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

SECTION 6

6.00 Severability. Should any portion of this chapter be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

SECTION 7

7.00 Applicability.

7.10 Overall Applicability. The requirements of this chapter apply to all operators of nonmetallic mining sites within Ashland County operating on or commencing to operate after August 1st, 2001 except as exempted in **sub. 7.20** and for nonmetallic mining sites located in a city, village or town within *Ashland County* that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code. This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This chapter applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in **sub. 14.40**.

7.20 Exemptions. This chapter does not apply to the following activities:

(1) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under secs. 30.19, 30.195 or 30.20, Stats., and complies with Chapter NR 340, Wisconsin Administrative Code.

(2) Excavations subject to the permit and reclamation requirements of secs. 30.30 or 30.31, Stats.

(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.

(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 ch. 293, Stats.

(9) Any activities required to prepare, operate or close a solid waste disposal facility under ch. 289, Stats., or a hazardous waste disposal facility under ch. 291, Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(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 Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.

(b) This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.

(c) If a nonmetallic mining site covered under **pars. (a)** and **(b)** is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

(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 these activities.

(12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21, Stats.

SECTION 8 **8.00 Administration.** The provisions of this chapter shall be administered by *Ashland County*

SECTION 9 **9.00 Effective Date.** The provisions of this chapter shall take effect on June 1, 2001.

SECTION 10

10.00 Definitions. In this chapter:

(1) "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by *Ashland County* pursuant to **s. 18**.

(2) "Applicable reclamation ordinance" means a nonmetallic mining reclamation ordinance, including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and subchapter I of ch. 295, Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in **sub. (20) (b) 3**. If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Chapter NR 135, Wisconsin Administrative Code.

(2m) "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.

(3) "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.

(4) "Department" means the Wisconsin Department of Natural Resources.

(5) "Environmental pollution" has the meaning in s. 295.11(2), Stats.

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

(7) "Financial assurance" means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in **s. 14** and is sufficient to pay for reclamation activities required by this chapter.

(8) "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.

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

(10) "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.

(11) "Nonmetallic mining" or "mining" means all of following:

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

(b) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to stockpiling of materials, blending mineral aggregates or

nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

(12) "Nonmetallic mining reclamation" or "reclamation" means the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this chapter, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.

(13) "Nonmetallic mining refuse" means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.

(14) "Nonmetallic mining site" or "site" means all contiguous areas of present or proposed mining described in **par. (a)**, subject to the qualifications in **par. (b).**

(a) Nonmetallic mining site means the following:

1. The location where nonmetallic mining is proposed or conducted.

2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.

3. Areas where nonmetallic mining refuse is deposited.

4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.

5. Areas where grading or regrading is necessary.

6. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

(b) "Nonmetallic mine site" does not include any of the following areas:

1. Those portions of sites listed in **par. (a)** not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.

2. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.

3. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

(15) "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, employes, contractors or subcontractors.

(16) "Registered geologist" means a person who is registered as a professional geologist pursuant to ss. 443.037 and 443.09, Stats.

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

(18) "Regulatory authority" means the following:

(a) *Ashland County* for nonmetallic mine sites located within its jurisdiction, or

(b) 1. A municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance,

2. The county in which the nonmetallic mining site is located, if no reclamation municipal ordinance exists pursuant to **subd. 1**., provided the county has an applicable reclamation ordinance, or

3. The Wisconsin Department of Natural Resources, but only if there is no applicable reclamation ordinance enacted by the municipality or the county in which the nonmetallic mining site is located.

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

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

(21) "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.

(22) "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.

(23) (a) "Unreclaimed acre" or "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under **sub. 29.30**. However the term does not include any areas described in **par. (b).**

(b) "Unreclaimed acre" or "unreclaimed acres" does not include:

1. Those areas where reclamation has been completed and certified as reclaimed under **sub. 29.30**.

2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.

3. Those portions of nonmetallic mining sites which are included in an nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.

4. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

5. For purposes of fees under **s. 27**, those areas within a nonmetallic mining site which *Ashland County* has determined to have been successfully reclaimed on an interim basis in accordance with **sub. 289.30.**

PART II – STANDARDS

SECTION 11

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

(1) GENERAL STANDARDS. (a) REFUSE AND OTHER SOLID WASTES. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to chs. 289 and 291, Stats.

(b) AREA DISTURBED AND CONTEMPORANEOUS RECLAMATION. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

(c) PUBLIC HEALTH, SAFETY AND WELFARE. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state and local regulations governing public health, safety and welfare.

(d) HABITAT RESTORATION. When the land use required by the reclamation plan approved pursuant to this chapter requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.

(e) COMPLIANCE WITH ENVIRONMENTAL REGULATIONS. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control.

(2) SURFACE WATER AND WETLANDS PROTECTION. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR 102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

(3) GROUNDWATER PROTECTION. (a) GROUNDWATER QUANTITY. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.

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

(4) TOPSOIL MANAGEMENT. (a) REMOVAL. Topsoil and topsoil substitute material shall be removed, protected and redistributed to support reclamation and site stabilization. Topsoil shall be managed as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation to the approved post-mining land use. Topsoil and topsoil substitute material removal shall be performed, as required by the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.

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

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

(5) FINAL GRADING AND SLOPES. (a) All areas affected by mining shall be graded in accordance with the reclamation plan approved pursuant to this chapter to achieve a stable and safe condition consistent with the post mining land use. The reclamation plan may designate areas such as stable slopes and rock faces which do not require final grading.

(b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless alternative requirements are approved under **s. 18**, and stable slopes can be demonstrated based on site-specific engineering analysis. 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, this approved slope 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.

(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 chapter in a manner which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

(7) REVEGETATION AND SITE STABILIZATION. Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this chapter, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

(8) ASSESSING COMPLETION OF SUCCESSFUL RECLAMATION. (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 chapter. 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 *Zoning Administration* or his/her agent;

2. Reports presenting results obtained during reclamation evaluations including summarized data on revegetation, photodocumentation 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 those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.

(d) Revegetation success may be determined by:

1. Comparison to an appropriate reference area;

2. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or

3. Comparison to an approved alternate technical standard.

(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 **s. 14** 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 subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this chapter.

PART III - PERMITTING

SECTION 12

12.00 Nonmetallic Mining Reclamation Permit Application.

12.10 Required Submittal. All operators of nonmetallic mining sites that operate on or after August 1, 2001 shall apply for a reclamation permit from ***Ashland County***. 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 who is the operator.

(5) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by **Part II**.

12.20 Existing Mines. The operator of any existing nonmetallic mining site in operation on August 1, 2001 may apply for an automatic reclamation permit from *Ashland County* by providing the information set forth below no later than on August 1, 2001 to *Ashland County Zoning Administration.*

(1) The information required by **sub. 12.10**.

(2) The first year's annual fee, as required by **s. 27**.

(3) A certification signed by the operator that he or she will provide *Ashland County* with a complete reclamation plan required by **s. 13** and financial assurance required by **s. 14** no later than the times established pursuant to this chapter.

12.30 New Mines. The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1st, 2001 or which has not applied for an automatic reclamation permit pursuant to **sub. 12.20** shall submit an application that meets the requirements specified below to *Ashland County Zoning Administration* prior to beginning operations. This application shall be accompanied by a plan review fee as specified in **s. 26.**

(1) The information required by **sub. 12.10**.

(2) The plan review and annual fees required by **secs. 26** and **27** .

(3) A reclamation plan conforming to **s. 13**.

(4) A certification that the operator will provide, as a condition of the reclamation permit, provide financial assurance as required by **s. 14** upon granting of the reclamation permit and before mining begins.

(5) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

SECTION 13

13.00 Reclamation Plan.

13.10 Reclamation Plan Requirements. All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the following requirements.

(1) PLAN REQUIRED. An operator who conducts or plans to conduct nonmetallic mining on or after August 1st, 2001 shall submit to *Ashland County* a reclamation plan that meets the requirements of this section and complies with the standards of **Part II**. To avoid duplication, the reclamation plan may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

(2) SITE INFORMATION. The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:

(a) Maps of the nonmetallic mining site including the general location, property boundaries, the areal extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the approximate elevation of ground water, the location of surface waters and the 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 *5' 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.

(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 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 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 s. 91.75, Stats., shall be restored to agricultural use.

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

(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.

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

(g) Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.

(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 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 **subs. 29.20 and 29.40** 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 **Part II** and timing of interim and final reclamation.

(5) The reclamation plan shall contain criteria for assuring successful reclamation in accordance **s. 11 (8)**.

(6) CERTIFICATION OF RECLAMATION PLAN. (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 operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation, except as provided in **par. (b).**

(b) For the following situations, the landowner and lessee, if different from the mine operator, are not required to submit a written certification in accordance with **par. (a)**. The operator shall provide written evidence that the landowner and lessee, if different from the operator, have been provided with a written copy of the reclamation plan, and that:

1. The mine operator has submitted a reclamation plan for an existing mine in accordance with **sub. 12.20**, or

2. The operator has submitted a reclamation plan for a new or reopened mine in accordance **sub. 12.30** which is located on land for which a lease agreement or memorandum of lease between the landowner and applicant was recorded prior August 1st, 2001.

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

13.20 Existing Mines. The operator of any nonmetallic mining site that submits an automatic permit application in conformance with **sub. 12.20** shall submit the reclamation plan required by **sub. 13.10** *within 18 months from the date the permit application was received.*

13.30 New Mines. The operator of any nonmetallic mining site not in operation prior to August 1, 2001 that applies for a permit in conformance with **sub. 12.30** shall submit the reclamation plan required by **sub. 13.10** with its application for a reclamation permit.

13.40 Existing Plans and Approvals. To avoid duplication of effort, the reclamation plan required by **sub. 13.10** may, by reference, incorporate existing plans or materials that meet the requirements of this chapter. Previous approvals for nonmetallic mining sites in operation on August 1st, 2001 shall satisfy the requirements of **sub. 13.10** if they meet the following requirements:

(1) The document has been approved by a county or municipality; and

(2) *Ashland County* finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.

13.50 Approval of Reclamation Plan. *Ashland County* shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with **sub. 16.30(3)** for existing mines and **sub. 16.40** for mines that apply for a reclamation permit in conformance with **sub. 12.30**. Conditional approvals of reclamation plans shall be made according to **sub. 16.70** and denials of reclamation plans shall be made pursuant to **s. 17**. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

SECTION 14

14.00 Financial Assurance.

14.10 Financial Assurance Requirements. All operators of nonmetallic mining sites in *Ashland County* shall prepare and submit a 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 **sub. (3)**.

(2) FILING. Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with in *Ashland County*. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to *Ashland County*. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to *Ashland County* only if it currently has primary regulatory responsibility.

(3) AMOUNT AND DURATION OF FINANCIAL ASSURANCE. The amount of financial assurance shall equal as closely as possible the cost to *Ashland 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 *Ashland County* to assure it equals outstanding reclamation costs. Any financial assurance filed with *Ashland County* shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. *Ashland County* may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if 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 *Ashland County* and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration 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 *Ashland 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 *Ashland County* for 2 or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance 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 *Ashland 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 or she determines that reclamation of any portion of the mining site or the entire site is complete. *Ashland 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. *Ashland 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 *Ashland County* shall issue a certificate of completion and shall release financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.

(b) *Ashland County* shall make a determination of whether or not the certification in par. (a) can be made within 60 days that the request is received.

(c) *Ashland County* may make a determination under this subsection that:

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 **s. 24** 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.

(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 *Ashland County* 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 *Ashland County* a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

(10) CHANGING METHODS OF FINANCIAL ASSURANCE. The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to **sub. (12).** The operator shall give *Ashland County* at least 60 days notice prior to changing methods of financial assurance and may not actually change methods without the written approval of *Ashland County*.

(11) BANKRUPTCY NOTIFICATION. The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding

under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.

(12) ADJUSTMENT OF FINANCIAL ASSURANCE. Financial assurance may be adjusted when required by *Ashland County*. *Ashland County* may notify the operator in writing that adjustment is necessary and the reasons for it. *Ashland County* may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.

(13) NET WORTH TEST. (a) Only an operator that meets the definition of "company" in s. 289.41 (1) (b), Stats., 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 s. 289.41 (4), Stats. The criteria in secs. 289.41 (6) (b), (d), (e), (f), (g), (h) and (i), Stats., 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 s. 289.41 (6), Stats.

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

(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 chapter.

14.20 Existing Mines. The operator of any nonmetallic mining site that applies for an automatic reclamation permit in conformance with **sub. 12.20** shall submit the proof of financial assurance required by **sub. 14.10** no later than *18 months from the date a permit has been applied for.*

14.30 New Mines. The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with **s. 12.30** shall submit the proof of financial assurance required by **sub. 14.10** as specified in the reclamation permit issued to it under this chapter.

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

SECTION 15

15.00 Public Notice and Right of Hearing.

15.10 New Mines. *Ashland County* shall, except as provided in **sub 15.20,** provide public notice and the opportunity for a public informational hearing as set forth below:

(1) PUBLIC NOTICE. (a) Except as provided in **sub. (3)** for existing mines, when *Ashland 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 **sub. 12.30**.

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

(c) Copies of the notice shall be forwarded by *Ashland 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 or parcels of land on which the site is located.

(2) HEARING. Except as provided in **sub. (3)** for existing mines, *Ashland 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) If it conducts a zoning-related hearing on the nonmetallic mine site, *Ashland County* shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. *Ashland County* shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.

(b) 1. If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in **par. (a)**, 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. *Ashland County* 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. *The hearing shall be conducted using the procedures for a non-contested case hearing pursuant to Ch. NR2.*

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

15.20 Existing Mines (1) No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued pursuant to **sub. 16.20** for an existing mine, except as provided in **sub. (3)**.

(2) If the regulatory authority accepts a previously approved reclamation plan for that mine as provided in **sub. 16.30(2)(a)**, no further public notice or informational hearing is required.

(3) If *Ashland County* requires the submittal of a new reclamation plan, public notice and the opportunity for public informational hearing shall be provided following the receipt of the reclamation plan in accordance **sub. 15.10**. In this case, the subject matter and testimony at that hearing, if held, shall be limited to the new reclamation plan.

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

SECTION 16

16.00 Issuance of a Nonmetallic Mining Reclamation Permit.

16.10 Permit Required. Every operator of a nonmetallic mining site in *Ashland County* who engages in or plans to engage in nonmetallic mining after September 1st, 2001 shall obtain a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this chapter under **sub. 7.20**. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1st, 2001 without a reclamation permit issued pursuant to this chapter.

16.20 Automatic Permit for Existing Mines. *Ashland County* shall issue an automatic reclamation permit to the operator of a nonmetallic mining site that submits an application meeting the requirements of **sub. 12.20**, according to the following provisions:

(1) The permit shall be issued within 30 days of such application..

(2) Existing mines that are granted a reclamation permit pursuant to this subsection shall, within one *(1) year*, submit to *Ashland County* the following:

(a) A reclamation plan that meets the requirements of **s. 13**; and

(b) Financial assurance required pursuant to **s. 14**.

(3) *Ashland County* may grant a reasonable extension to the deadline in **sub. (2)** when it finds extenuating circumstances exist.

16.30 Evaluation of Follow-Up Submittals for Existing Mines. Mines covered by automatic permits issued under **sub. 16.20** shall submit a reclamation plan in accordance with **sub. 13.20** and proof of financial assurance in accordance with **sub. 14.20** ***within one (1) year from the date the permit is requested***. Reasonable extensions to these deadlines may be granted in writing by *Ashland County* where extenuating circumstances exist. These follow-up submittals shall be evaluated as set forth below:

(1) The reclamation plan and financial assurance shall meet the requirements of **sub. 16.20(2)**.

(2) (a)*Ashland County* shall accept, as satisfaction of the requirement for submittal of a reclamation plan pursuant to **sub. 16.20(2)(a)**., submittal of a previously-completed document that includes plans for reclamation so long as:

1. The document has been approved by a county or municipality; and

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

(b) If *Ashland County* determines that a document with reclamation plans previously approved meets some, but not all of, the requirements of this chapter, it shall request the supplemental information needed to satisfy the reclamation plan requirements of this section. In that case, *Ashland County* shall determine whether or not to provide public notice and opportunity for public hearing pursuant to **sub. 15.20(3)**, depending on the nature and extent of the supplemental information.

(3) Within 30 days of receipt of the reclamation plan and evidence of financial assurance as required under **sub. 16.20(2)**, *Ashland County* shall affirm in writing its decision whether to approve these submittals and continue the nonmetallic mining reclamation permit issued pursuant to **sub. 16.20** . A reclamation permit with this written affirmation shall satisfy the requirements of this chapter without further action, submittal or approval.

16.40 Permit Issuance for New Mines. Applications for reclamation permits for nonmetallic mining sites not in operation on August 1st, 2001 that satisfy **s. 12.30** shall be issued a reclamation permit or otherwise acted on as provided below.

(1) Unless denied pursuant to **s. 17**, *Ashland County* shall approve in writing a request that satisfies the requirements of **sub. 12.30** to issue a nonmetallic mining reclamation permit for a nonmetallic mine where mining has not yet taken place before August 1st, 2001 or an existing nonmetallic mine where mining is not taking place on or after August 1, 2001.

(2) *Ashland County* may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of **s. 13**. The regulatory authority may issue a reclamation permit subject to conditions in **sub. 16.70** 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 subchapter, unless a public hearing is held pursuant to **s. 15**. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to **sub. 16.70** if appropriate, or shall deny the permit as provided in **s. 17**, no later than 60 days after completing the public hearing.

(3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of **s. 13** and provision by the applicant of financial assurance required under **s. 14** and payable to *Ashland County* prior to beginning mining.

16.50 Automatic Permit for Local Transportation-Related Mines

(1) *Ashland County* shall automatically issue an expedited permit under this subsection 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 Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;

(d) Is not a commercial source;

(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 chapter under **sub. 7.20(10)**.

(2) In this subsection, "municipality" has the meaning defined in s. 299.01(8), Stats.

(3) Automatic permits shall be issued under this subsection in accordance with the following provisions:

(a) The applicant shall notify *Ashland 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 *Ashland County* to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.

(c) *Ashland County* shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under **s. 13**.

(d) *Ashland County* shall accept the contractual provisions in lieu of the financial assurance requirements in **s. 14**.

(e) The public notice and hearing provisions of **s. 15** do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.

(f) Mines permitted under this subsection shall pay an annual fee to *Ashland County* as provided in **s. 27**, but shall not be subject to the plan review fee provided in **s. 26**.

(g) *Ashland County* shall issue the automatic permit within 7 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 still applies provided the site will be reclaimed under

a contractual obligation with the municipality in accordance with the Wisconsin Department of Transportation requirements.

(i). Notwithstanding **s .25** , the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

16.60 Expedited Review. Any operator of a nonmetallic mining site may request expedited review of a reclamation permit application under **sub. (1)** or **sub. (2)** as follows:

(1) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in **s. 26.20**. This request shall state the need for such expedited review and the date by which such expedited review is requested.

(2) The operator may submit a request for expedited review under this subsection if the applicant requires a reclamation permit to perform services under contract with a municipality. This 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.

(3) Following receipt of a request under this subsection, *Ashland County* shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under **sub. (1)** shall be returned.

(4) Expedited review under this subsection shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to **s. 15**. This subsection does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection by a specific date.

16.70 Permit Conditions. Any decision under this section may include conditions as provided below:

(1) *Ashland 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 chapter.

(2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to **s. 14** prior to beginning mining.

SECTION 17

17.00 Permit Denial. An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

(1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in **s. 16**, if *Ashland County* finds any of the following:

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

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

(c) 1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within 10 years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.

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

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

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

c. Forfeitures of financial assurance.

(d) A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under **s. 22**.

SECTION 18

18.00 Alternative Requirements.

18.10 Scope of Alternative Requirements Approvable. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in **s. 11.00**. *Ashland County* may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and *Ashland County* finds that all of the following criteria are met:

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

(2) Unnecessary hardship 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.

18.20 Procedures. (1) The operator of a nonmetallic mining site requesting an alternate requirement in **sub. 18.10** shall demonstrate all the criteria in **sub. 18.10**. This shall be submitted in writing to *the Ashland County Zoning Administration with the fee established by the Ashland County Zoning Committee for the right to present a reclaimation plan alternative to the Ashland County Board of Adjustment.*

(3) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.

(4) *Public informational hearing pursuant to this Chapter may be requested and held in accordance with Section 15.10.*

18.30 Transmittal of Decision on Request for Alternative Requirement. The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

18.40 Notice to Wisconsin Department of Natural Resources. *Ashland County* shall provide notice to the Wisconsin Department of Natural Resources as set forth in this subsection. Written notice shall be given to the Wisconsin Department of Natural Resources at least 10 days prior to any public hearing held under **sub. 18.20** on a request for an alternate requirement under this section. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within 10 days of issuance.

SECTION 19

19.00 Permit Duration. (1) A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to **sub. 32.20**.

(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 **s. 20**.

SECTION 20

20.00 Permit Transfer. A nonmetallic mining reclamation permit issued under this chapter 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 *Ashland 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 *Ashland County* and *Ashland 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.

SECTION 21

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

SECTION 22

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

PART IV - ADMINISTRATION

SECTION 23

23.00 Permit Modification.

23.10 By *Ashland County*. A nonmetallic mining reclamation permit issued under this chapter may be modified by *Ashland County* if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter. Such modification shall be by an order modifying the permit in accordance with **s. 32.** This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter.

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

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

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

SECTION 24

24.00 Permit Suspension and Revocation

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

(1) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.

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

(c) Failed on a repetitive and significant basis to follow the approved reclamation plan.

24.20 Procedures. If *Ashland County* finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in **sub. 24.10**, it may issue a special order suspending or revoking such permit as set forth in **sub. 32.20**.

24.30 Consequences. (1) If *Ashland County* makes any of the findings in **sub. 24.10**, 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 **s. 32**.

(2) If *Ashland County* makes any of the findings in **sub. 24.10,** it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to *Ashland County*. *Ashland County* may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

SECTION 25

25.00 Annual Operator Reporting.

25.10 Contents and Deadline. Annual reports that satisfy the requirements of this section 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 *Ashland 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 pars. (d) and (e).

(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 Chapter NR 135, Wisconsin Administrative Code."

(2) DEADLINE. The annual report shall cover activities for a calendar year and be submitted within 60 days following the end of the year.

(3) WHEN REPORTING MAY END. Annual reports shall be submitted by an operator for all active and intermittent mining sites to *Ashland County* for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to **sub. 29.30** or at the time of release of financial assurance pursuant to **sub. 14.10(7)**.

25.20 Inspection in Lieu of Report. *Ashland County* may, at its discretion, obtain the information required in **sub. 25.10** for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If *Ashland County* obtains and documents the required information, the annual report need not be submitted by the operator. If *Ashland County* determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, *Ashland County* shall require the operator to submit the certification required in **sub. 25.10(1)(g)**.

25.30 Retention of Annual Reports. Annual reports submitted under **sub. 25.10** or inspection records that replace them under **sub. 25.20** shall be retained by *Ashland County Zoning Administration* for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

SECTION 26

26.00 Plan Review Fees.

26.10 Amount and Applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **sub. 12.30** shall submit a non-refundable plan

review fee of two hundred ($200.00) dollars. No plan review fee may be assessed under this section for any existing nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of **sub. 12.20** or for any local transportation-related mining receiving an automatic permit under **sub. 16.50**. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to **s. 23**.

26.20 Expedited Plan Review Fee. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **sub. 12.30** may obtain expedited reclamation plan review by paying a fee of four hundred ($400.00) dollars. Such fee shall be in addition to that required in **sub. 26.10.**

26.30 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 **s. 27**.

SECTION 27

27.00 Annual Fees.

27.10 Areas Subject to Fees, Procedures and Deadline. (1) Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees to *Ashland County*. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under **sub. 27.20** and a share for *Ashland County* under **sub. 27.30** that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

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

(a) "Unreclaimed acre" or "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after August 1st, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under **sub. 14.10(7)**. However the term does not include any areas described in par. (b).

(b) "Unreclaimed acre" or "unreclaimed acres" does not include:

1. Those areas where reclamation has been completed and certified as reclaimed under **sub. 14.10(7)**.

2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1st, 2001.

3. Those portions of nonmetallic mining sites which are included in an approved nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining.

4. Areas previously mined but used after August 1st, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

5. Those areas within a nonmetallic mining site which the regulatory authority has determined to have been successfully reclaimed on an interim basis in accordance with **subs. 29.20** and **29.30**.

6. Those areas defined as not included in a nonmetallic mining site under **sub. 10(16)(b)**.

(3) Fees assessed pursuant to this section shall be based on unreclaimed acres at the end of the year. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under **s. 29**. Fees shall be paid no later than December 31 for the subsequent year.

(4) For new or reopened mines that submit a reclamation permit application under **sub. 12.30**, the first year's annual fee shall be based upon the unreclaimed acres which are anticipated at the end of that calendar year for mines submitting applications during the calendar year. *The fee shall be prorated based on the time remaining in the calendar year.*

(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 they be held by *Ashland County* pending certification of completed reclamation pursuant to **sub. 14.10(7)**. Upon such certification *Ashland County* shall refund that portion of the annual fee that applies to the reclaimed areas. If *Ashland County* fails to make a determination under **sub. 14.10(7)** within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.

27.20 Wisconsin Department of Natural Resources Share of Fee. (1) Fees paid under this section shall, except where provided in **sub. (2)**, include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Table 1. For sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be **$15.00.**

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

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1 to 5 acres [does not include mines < 1 acre]	$ 30
6 to 10 acres	$ 60
11 to 15 acres	$ 90
16 to 25 acres	$ 120
26 to 50 acres	$ 140
51 acres or larger	$ 150

(2) For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the share for the Wisconsin Department of Natural Resources shall be $15.

(3) *Ashland County* shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31st of the year for which they were collected.

27.30 *Ashland County*'s Share of Fee. Fees paid under this section shall also include an annual fee due to ***Ashland County*** which shall be *thirty five dollars ($35.00) per unreclaimed acre per year with a minimum of one hundred dollars ($100.00).*

Note: The fees are made a part of the Ashland County fee schedule. The fee schedule is available at the Ashland County Zoning Administration.

Note: Annual fees collected under this section are required under s. 295.12(3)(e)1.b, Stats.,. to equal as closely as possible the cost of inspection of nonmetallic mining reclamation. Section 295.15, Stats. requires the regulatory authority to use its fees only for the administration of its reclamation ordinance. There is a further limitation, required by s. NR 135.23(1)(g), Wis. Adm. Code, that annual fees for local transportation-related mines issued permits under sub. 16.50 may not exceed the amounts set forth below in Table 2.

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*
1 to 5 acres, does not include mines < 1 acre	*$ 150*
6 to 10 acres	*$ 300*
11 to 15 acres	*$ 450*
16 to 25 acres	*$ 600*
26 to 50 acres	*$ 700*
51 acres or larger	*$ 750*

27.40 Reduced Fee for Inactive Mines. Any site on which no nonmetallic mining activity has taken place in a calendar year shall be assessed a fee for the following calendar year of fifty *dollars ($50.00).*

SECTION 28 **28.00 Regulatory Reporting and Documentation.**

28.10 Reporting. *Ashland County* shall send an annual report to the Wisconsin Department of Natural Resources by March 31st of each calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program:

(1) The total number of nonmetallic mining reclamation permits in effect.

(2) The number of new permits issued within the jurisdiction of *Ashland County..*

(3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.

(4) The number of acres being mined.

(5) The number of acres that have been reclaimed and have had financial assurance released pursuant to **sub. 14.10(7)**.

(6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this subchapter pursuant to **subs. 29.10 and 29.20**.

(7) The 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.

28.20 Documentation. *Ashland County* shall, to the best of its ability, maintain the information set forth below, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of *Ashland County's* reclamation program pursuant to Chapter NR 135, Wisconsin Administrative Code:

(1) Documentation of compliance with Chapter NR 135, Wisconsin Administrative Code and this chapter.

(2) The procedures employed by *Ashland County* regarding reclamation plan review, and the issuance and modification of permits.

(3) The methods for review of annual reports received from operators.

(4) The method and effectiveness of fee collection.

(5) Procedures to accurately forward the Wisconsin 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 citizen complaints.

(8) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.

(9) The maintenance and availability of records.

(10) The number and type of approvals for alternative requirements issued pursuant to **s. 18** .

(11) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to **sub. 14.10(7)**.

(12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of *Ashland County* to implement its nonmetallic mining reclamation program under this chapter.

(13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.

(14) Any other performance criterion necessary to ascertain compliance with Chapter NR 135, Wisconsin Administrative Code.

SECTION 29

29.00 Completed Reclamation - Reporting, Certification and Effect

29.10 Reporting. The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code.

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

29.30 Certification of Completed Reclamation. *Ashland County* shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with **sub. 14.10(7)(c)**. If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with **s. 13**, *Ashland County* shall issue the mine operator a written certificate of completion.

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

(1) No fee shall be assessed under **s. 27** for the area so certified.

(2) The financial assurance required by **s. 14** 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 **sub. 29.20** and so certified under **sub. 29.30**, financial assurance for reclaiming the certified area shall be *reduced based on approved reclamation plan.*

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

SECTION 30

30.00 Permit Termination. When all final reclamation required by a reclamation plan conforming to **s. 13** and required by this chapter is certified as complete pursuant to **subs. 14.10(7) and 29.30**, *Ashland County* shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

PART V - ENFORCEMENT

SECTION 31

31.00 Right of Entry and Inspection. For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of *Ashland County* may inspect any nonmetallic mining site subject to this chapter as provided below:

(1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employe or agent of *Ashland County* or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this chapter, Chapter NR 135, Wisconsin Administrative Code or subchapter I of ch. 295, Stats.

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

SECTION 32

32.00 Orders and Citations.

32.10 Enforcement Orders. *Ashland County* may issue orders as set forth in Section 295.19(1)(a), Stats., to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter. A violation of this chapter, an order or permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.

32.20 Special Orders. **Ashland County** may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to **s. 24**, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.

32.30 Review of Orders. 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 s. 68.11, Stats., notwithstanding the provisions of ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats.

32.40 Citations. *Ashland County* may issue a citation under s. 66.119, Stats. to collect forfeitures to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.

32.50 Enforcement. ***Ashland County*** may submit any order issued under **s. 32** to abate violations of this chapter to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.

SECTION 33

33.00 Penalties. Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 13** and a permit issued under this chapter may result in forfeitures as provided in Section 295.19(3), Wisconsin Statutes, as follows:

(1) Any person who violates Chapter NR 135, Wisconsin Administrative Code or an order issued under **s. 32** may be required to forfeit not less than $25 nor more than $1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under **s. 32** is suspended, stayed or enjoined, this penalty does not accrue.

(2) Except for the violations referred to in **sub. (1)**, , any person who violates subchapter I of ch. 295, Stats., Chapter NR 135, Wisconsin Administrative Code, any reclamation plan approved pursuant to this chapter or an order issued pursuant to **s. 32** shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of violation is a separate offense. While an order issued under **s. 32** is suspended, stayed or enjoined, this penalty does not accrue.