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SUBCHAPTER I GENERAL

74.01 TITLE. This chapter may be cited as the Dane County non-metallic mining reclamation ordinance.

74.02 PURPOSE. The purpose of this subchapter is to adopt and implement effective reclamation requirements for non-metallic mining sites in Dane County and to provide uniform and predictable reclamation standards in accordance with Wis. Admin. Code ch. NR 135 and Wis. Stats. ch. 295, subchapter 1. This subchapter is not intended to interfere with zoning rules or regulations or with existing permits relating to the location, operation or end uses of an existing non-metallic mining site provided the permits otherwise comply with the provisions of this subchapter.

74.03 STATUTORY AUTHORITY. This chapter is adopted under authority of s. 295.13(1), Wis. Stats., s. NR 135.32, Wis. Admin. Code, and s. 59.51, Wis. Stats.

74.04 RESTRICTIONS ADOPTED UNDER OTHER AUTHORITY. The purpose of this chapter is to adopt and implement the uniform statewide standards for non-metallic mining reclamation required by s. 295.12(1)(a), Wis. Stats., and contained in ch. NR 135, Wis. Admin. Code. It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing rules, regulation, ordinances or permits not concerning non-metallic mining reclamation previously adopted pursuant to other Wisconsin law.

74.05 INTERPRETATION. In their interpretation and application, the provisions of this chapter shall be held to be the applicable requirements for non-metallic 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 non-metallic mining sites required by subchapter I of ch. 295, Wis. Stats., and ch. NR 135, Wis. Admin. 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 ch. NR 135, Wis. Admin. Code, and where the provision is unclear, the provision shall be interpreted to be

consistent with the Wisconsin Statutes and the provisions of ch. NR 135, Wis. Admin. Code.

74.06 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.

74.07 APPLICABILITY; OVERALL APPLICABILITY.

(1) The requirements of this chapter apply to all non-metallic mining sites within Dane County, except as exempted in s. 74.072. This chapter does not apply to non-metallic mining sites where non-metallic mining permanently ceased before August 1, 2001.

(2) This chapter applies to non-metallic 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 s. 74.141.

[History: (2) am., OA 2, 2002-03, pub. 08/13/02; (1) am., OA 44, 2007-08, pub. 02/19/08.]

74.072 APPLICABILITY; EXEMPTIONS. This chapter does not apply to the following activities:

(1) Non-metallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the WDNR under ss. 30.19, 30.195 or 30.20, Wis. Stats., and that complies with ch. NR 340, Wis. Admin. Code.

(2) Excavations subject to the permit and reclamation requirements of ss. 30.30 or 30.31, Wis. 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) Non-metallic mining at non-metallic 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, Wis. Stats.

(9) Any activities required to prepare, operate or close a solid waste disposal facility under ch. 289, Wis. Stats., or a hazardous waste disposal facility under ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable non-metallic 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 non-metallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain non-metallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(10)(a) Non-metallic 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 non-metallic mining is subject to the requirements of WisDOT which are equivalent to, and consistent with, the requirements of this chapter concerning the restoration of the non-metallic mining site.

(b) This exemption only applies to a non-metallic mining operation with limited purpose and duration where WisDOT actively imposes reclamation requirements which must be equivalent to the reclamation standards imposed on other non-metallic mining sites in the county and the operator reclaims the non-metallic mining site in accordance with these requirements. Equivalent standards shall be deemed to be those contained in subchapter II of this chapter including, but not limited to, standards regarding refuse and other solid wastes, area disturbed in contemporaneous reclamation, public health, safety and welfare, habitat restoration, compliance with environmental regulations, surface water and wetlands protection, groundwater protection, top soil management, final grading and slopes, top soil redistribution for reclamation, revegetation and site stabilization and assessing completion of successful reclamation. The duration of the exemption shall be limited to the length of the WisDOT contract for construction of a specific transportation project.

(c) If a non-metallic mining site covered under pars. (a) and (b) is used to concurrently supply materials for projects unrelated to the WisDOT project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under the WisDOT contract and supervision provided both are equivalent to, and consistent with, the requirements of this chapter.

(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) Non-metallic mining sites located in a city, village or town within Dane County that has adopted an ordinance pursuant to s. 295.14, Wis. Stats., and s. NR 135.32(2), Wis. Admin. Code.

(13) Non-metallic mining sites where non-metallic mining permanently ceases before August 1, 2001.

74.08 ADMINISTRATION. The provisions of this chapter shall be administered by the zoning administrator under the general direction of the director. Policymaking oversight shall be provided by the entity designated as the county's zoning agency.

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

74.10 DEFINITIONS. In this chapter, the following words and phrases shall have the meanings indicated:

(1) *Agricultural use* means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of

which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

(2) *Alternative requirement* means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the zoning administrator pursuant to s. 74.181.

(3) *Applicable reclamation ordinance* means a non-metallic mining reclamation ordinance, including this chapter, that applies to a particular non-metallic mining site and complies with the requirements of ch. NR 135, Wis. Admin. Code, and subchapter I of ch. 295, Wis. Stats.

(4) *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.

(5) *Committee* means the committee of the county board designated to act as the county zoning agency.

(6) *Contemporaneous reclamation* means the sequential or progressive reclamation of portions of the non-metallic 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 non-metallic mining activities.

(7) *County* means the County of Dane.

(7m) *Director* means the director of the Dane County Planning & Development Department.

(8) *Environmental pollution* has the meaning in s. 295.11(2), Wis. Stats.

(10) *Financial assurance* means a commitment of funds or resources by an operator to the county that satisfies the requirements in s. 74.141 and is sufficient to pay for reclamation activities required by this chapter.

(10m) *Highwall* means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.

(11) *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 non-metallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.

(11m) *Licensed professional geologist* means a person who is licensed as a professional geologist pursuant to ch. 470, Wis. Stats.

(12) *Municipality* means any city, town or village in Dane County.

(13) *Non-metallic mineral* means a product, commodity or material consisting principally of naturally occurring, organic or inorganic, non-metallic, nonrenewable material. Non-metallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.

(14) *Non-metallic mining or mining* means all of the following:

(a) Operations or activities at a non-metallic mining site for the extraction from the earth of mineral aggregates or non-metallic minerals for sale or use by the operator. Non-metallic mining includes use of mining equipment or techniques to remove materials from the in-place non-metallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Non-metallic mining does

not include removal from the earth of products or commodities that contain only minor or incidental amounts of non-metallic 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 non-metallic mining site that are related to the preparation or processing of the mineral aggregates or non-metallic minerals obtained from the non-metallic mining site. These processes include, but are not limited to, stockpiling of materials, blending mineral aggregates or non-metallic minerals with other mineral aggregates or non-metallic minerals, blasting, grading, crushing, screening, scalping and dewatering.

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

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

(17) *Non-metallic 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) *Non-metallic mining site* means the following:

1. The location where non-metallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for non-metallic mining.
3. Areas where non-metallic mining refuse is deposited.
4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for non-metallic mining.
5. Areas where grading or regrading is necessary.
6. Areas where non-metallic mining reclamation activities are carried out or structures needed for non-metallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

(b) *Non-metallic mining site* does not include any of the following areas:

1. Those portions of sites listed in par. (a) not used for non-metallic mining or purposes related to non-metallic mining after August 1, 2001.
2. Separate, previously mined areas that are not used for non-metallic 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 non-metallic mining.

(18) *Operator* means any person who is engaged in, or who has applied for a reclamation permit to engage in, non-metallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

(18m) *Person* means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

(18n) *Registered professional engineer* means a person who is registered as a professional engineer pursuant to ss. 443.04 and 443.09, Wis. Stats.

(19) *Regulatory authority* means the following:

(a) Dane County for non-metallic mine sites located within its jurisdiction, except where par. (b) applies;

(b) The municipality in which the non-metallic mining site is located and which has adopted a reclamation ordinance meeting the requirements of ch. NR 135, Wis. Admin. Code.

(20) *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 non-metallic mining reclamation 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.

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

(22) *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.

(23) *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.

(24) *Un-reclaimed acre* or *un-reclaimed acres* means those un-reclaimed areas in which non-metallic mining has occurred after August 1, 2001 and areas where non-metallic mining reclamation has been completed but is not yet certified as reclaimed under s. 74.293. However, the term does not include any areas described in par. (a).

(a) *Un-reclaimed acre* or *un-reclaimed acres* does not include:

1. Those areas where reclamation has been completed and certified as reclaimed under s. 74.293.

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

3. Those portions of non-metallic mining sites which are included in a non-metallic mining reclamation plan approved pursuant to this chapter but are not yet affected by non-metallic 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 non-metallic mining.

5. For purposes of fees under s. 12.27, those areas within a non-metallic mining site which the zoning administrator has determined to have been successfully reclaimed on an interim basis in accordance with s. 74.293.

(25) *WDNR* means the Wisconsin Department of Natural Resources.

(26) *WisDOT* means the Wisconsin Department of Transportation.

[History: (2), (10), and (18m) am., OA 2, 2002-03, pub. 08/13/02; (9) rep., (intro.) and (18m) am. and (10m) and (11m) cr., OA 44, 2007-08, pub. 02/19/08.]

SUBCHAPTER II STANDARDS

74.11 STANDARDS. All non-metallic mining sites subject to this chapter shall be reclaimed in conformance with the standards set forth in ss. 74.111–74.12.

74.111 GENERAL STANDARDS.

(1) *Refuse and other solid wastes.* Non-metallic 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 WDNR adopted pursuant to chs. 289 and 291, Wis. Stats.

(2) *Area disturbed and contemporaneous reclamation.* Non-metallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by non-metallic mining and to provide for non-metallic mining reclamation of portions of the non-metallic mining site while non-metallic mining continues on other portions of the non-metallic mining site.

(3) *Public health, safety and welfare.* All non-metallic 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 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 non-metallic mining operations.

(5) *Compliance with environmental regulations.* Reclamation of non-metallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control. Mineral extraction sites shall comply with the erosion control and stormwater provisions of chapter 14.¹

¹ *Information Note: Other applicable environmental, zoning or land use regulations may include ch.s NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 340, 500-590, and 812, Wis. Admin. Code, chs. 30 and 91, Wis. Stats., and section 404 of the Clean Water Act (33 USC s. 1344), which may be applicable to all or part of either an existing or proposed non-metallic mining project, so long as they do not require or directly regulate the reclamation of non-metallic mining sites as addressed under subch. I of ch. 295, Stats.*

74.112 STANDARDS; SURFACE WATER AND WETLANDS PROTECTION.

Non-metallic mining reclamation shall be conducted and completed in a manner that assures compliance with the WDNR's water quality standards for surface waters and wetlands contained in chs. NR 102 to NR 105, Wis. Admin. Code. Before disturbing the surface of a non-metallic 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.

74.113 STANDARDS; GROUNDWATER PROTECTION.

(1) *Groundwater quantity.* A non-metallic 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.

(2) *Groundwater quality.* Non-metallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in ch. NR 140, Wis. Admin. Code, to be exceeded at a point of standards application defined in that chapter.

74.114 STANDARDS; TOPSOIL MANAGEMENT.

(1) *Removal.* Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan in order to achieve reclamation to the approved post-mining land use. Removal of on-site topsoil and topsoil substitute material, 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 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.²

(3) *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.

[History: (1) am., OA 44, 2007-08, pub. 02/19/08.]

74.115 STANDARDS; FINAL GRADING AND SLOPES.

(1)(a) All areas affected by mining shall be reclaimed in accordance with the approved reclamation plan, pursuant to s. 74.131, to provide that a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable

²Information Note: Existing resources that may be used to identify the soil present on a site include the county soil surveys and information obtained from a soil scientist or the county extension agent or other available resources.

and safe and not in need of reclamation or designate other areas affected by mining including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either: a site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.

(b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under ss. 74.181-74.184; steeper slopes are shown to be stable through a field plot demonstration 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.

(2) All areas in the non-metallic 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.

(3) When the approved post-mining land use includes a body of water, the approved final grade at the edge of the body of water shall extend vertically six 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.

[History: (1)(a) and (b) am. and (3) cr., OA 44, 2007-08, pub. 02/19/08.]

74.116 STANDARDS; 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.

74.117 STANDARDS; 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 non-metallic 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.

74.118 STANDARDS; ASSESSING COMPLETION OF SUCCESSFUL RECLAMATION.

(1) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be quantifiable.

- (2) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
 - (a) On-site inspections by the zoning administrator;
 - (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 and reports.
- (3) In those cases where the post-mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
- (4) Revegetation success may be determined by:
 - (a) Comparison to an appropriate reference area;
 - (b) Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
 - (c) Comparison to an approved alternate technical standard.
- (5) Revegetation using a variety of plants indigenous to the area is favored.

74.119 STANDARDS; 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 ss. 74.141-74.144 is maintained covering all remaining portions of the site that have been affected by non-metallic mining and that have not been reclaimed.

74.12 STANDARDS; MAINTENANCE. During the process 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, to comply with the standards of this subchapter, and to meet the goals specified in the reclamation plan approved pursuant to this chapter.

SUBCHAPTER III PERMITTING

74.120 RECLAMATION PERMIT REQUIRED. No person may engage in non-metallic mining or in non-metallic mining reclamation without first obtaining a non-metallic mining reclamation permit issued pursuant to this chapter, unless the activity is specifically exempted in sections 74.07(1) and 74.10(17)(b).
[History: cr., OA 44, 2007-08, pub. 02/19/08.]

74.121 RECLAMATION PERMITS; NON-METALLIC MINING RECLAMATION PERMIT APPLICATION. [intro.] All operators of non-metallic mining sites shall apply for a reclamation permit from the zoning administrator before beginning mining operations. The requirement for a permit under this chapter is in addition to the required

conditional use permit under ch. 10. All applications for reclamation permits under this section shall include the following:

- (1) A brief description of the general location and nature of the non-metallic mine.
- (2) A legal description of the property on which the non-metallic 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 lessees of the property on which the non-metallic 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 non-metallic mining reclamation standards established by subchapter II.
- (6) A reclamation plan conforming to s. 74.131.
- (7) Certification that the operator will provide financial assurance as required by s. 74.141 as a condition of granting a reclamation permit and before mining begins.
- (8) The plan review fee as required by s. 12.21 and the first year's annual fee, as required by s. 12.27.

[**History:** intro. am. and (6), (7) and (8) cr., OA 44, 2007-08, pub. 02/19/08.]

74.122 RECLAMATION PERMITS; REFERRAL OF APPLICATIONS TO MUNICIPALITIES.

- (1) Upon receipt of an application for a permit under s. 74.121, the zoning administrator shall forthwith transmit a copy of the application to the municipality in which the mine is located as well as to any municipality whose corporate boundaries are within one-quarter mile of the mine site.
- (2) The municipality shall have 14 days from the date of mailing of the application within which to furnish the zoning administrator with a statement of its position on the application.
- (3) A municipality's statement under sub. (2) shall be limited to factual matters which affect the issuance of a permit under this chapter.
- (4) The zoning administrator shall consider the municipality's statement in acting upon the application for a permit, however, the zoning administrator shall not in any event consider matters which are outside the standards for denial set forth in this chapter.
- (5) The zoning administrator may supply forms to be used by municipalities under this section or may otherwise require the use of a certain format for a response by municipalities.

[**History:** 74.123 rep., OA 44, 2007-08, pub. 02/19/08.]

[**History:** (3) am., OA 2, 2002-03, pub. 08/13/02; 74.124 rep., OA 44, 2007-08, pub. 02/19/08.]

[74.123-74.13 reserved.]

74.131 RECLAMATION PLANS; REQUIREMENTS. [intro.] All operators of non-metallic 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 non-metallic mining shall submit to the zoning administrator a reclamation plan that meets the requirements of this section and complies with the standards of subchapter 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 non-metallic mining site including the general location, property boundaries, the areal extent, geologic composition and depth of the non-metallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage patterns, the approximate elevation of ground water as determined by existing hydrogeologic information. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional hydrologist.³

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

(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 a minimum of ten (10) foot contour intervals.

(d) Location of manmade features on or near the site.

(e) For proposed non-metallic mine sites that include previously mined areas, a plan view drawing showing the location and extent of land previously affected by non-metallic mining, including the location of stockpiles, wash ponds and sediment basins.⁴

(3) *Post-mining land use.*

(a) The reclamation plan shall specify a proposed post-mining land use for the non-metallic 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.⁵

³*Information Note: Topsoil or topsoil substitute material required to support revegetation needed for reclaiming the site to approved post-mining land use can be identified using soil surveys or other available information.*

⁴*Information Note: Some or all of the information required above may be shown on the same submittal, e.g., the site map required by par. (a) may also show topography required by par. (c).*

⁵*Information Note: A proposed post-mining land use is necessary to determine the type and degree of reclamation needed to correspond with that land use. The post-mining land use will be key in determining the reclamation plan. Final slopes, drainage patterns,*

(b) Land used for non-metallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to s. 91.75, Wis. Stats., shall be restored to agricultural use.⁶

(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 non-metallic mining site. The following shall be included:

(a) A description of the proposed earthwork and reclamation, including final slope angles, highwall reduction, benching, terracing and other structural slope stabilization measures and, if necessary, a site-specific engineering analysis performed by a registered professional engineer as provided by s. 74.115(1) and (2).

(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 of vegetative cover, productivity, plant density, diversity or other applicable measures.

(h) A plan and, if necessary, a narrative showing erosion control and stormwater measures to be employed to meet the requirement of chapter 14 of the Dane County Code of Ordinances. 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 ss. 74.292 or 74.294, and release of financial assurance pursuant to s. 74.293, and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved,

site hydrology, seed mixes and the degree of removal of mining-related structures, drainage structures, and sediment control structures will be dictated by the approved post-mining land use.

⁶*Information Note: Section 91.75(9), Wis. Stats., contains this requirement. Section 91.01(1), Wis. Stats., defines the term "agricultural use".*

methods of reclamation to comply with the standards in subchapter II and timing of interim and final reclamation.⁷

(j) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses.⁸

(5) The reclamation plan shall contain criteria for assuring successful reclamation in accordance with s. 74.118.

(6) *Certification of reclamation plan.* The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. If the operator does not own the land, the landowner or lessor, shall also provide a signed certification that he or she concurs with the reclamation plan and will allow its implementation.

[History: (4)(i) am., OA 2, 2002-03, pub. 08/13/02; (1), (2)(a), (c), (e) and (4)(a) and (b) am., (2)(am) and (4)(j) cr. and (7) rep., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.132 rep., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.133 rep., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.134 rep., OA 44, 2007-08, pub. 02/19/08.]

[74.132–74.134 reserved.]

74.135 RECLAMATION PLANS; APPROVAL OF RECLAMATION PLAN. The zoning administrator shall approve, conditionally approve or deny reclamation plans submitted under s. 74.131 in writing in accordance with s. 74.164. Conditional approvals of reclamation plans shall be made according to s. 74.164 and denials of reclamation plans shall be made pursuant to s. 74.171. 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.

[History: am., OA 2, 2002-03, pub. 08/12/03; am., OA 44, 2007-08, pub. 02/19/08.]

[74.136-74.14 reserved.]

74.141 FINANCIAL ASSURANCE; REQUIREMENTS. [intro.] All operators of non-metallic mining sites in Dane County shall prepare and submit a proof of financial assurance that meets the following requirements:

⁷*Information Note: Some of the information required by this subsection may be combined to avoid duplication, e.g. a single map may show anticipated post-mining topography required by par. (c) as well as structures and roads as required by par. (d).*

⁸*Safety measures include, but are not limited to, visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of rock face and creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.*

- (1) *Notification.* The zoning administrator shall provide written notification to the operator of the amount of financial assurance required under sub. (3).
- (2) *Filing.* Following approval of the non-metallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with the zoning administrator. The financial assurance shall provide that the operator shall faithfully perform all requirements of NR 135, Wis. Admin. Code, this chapter and the reclamation plan. Financial assurance shall be payable exclusively to Dane County. In cases where one or more other regulatory authorities regulate a non-metallic mining site, all financial assurance shall be made payable to Dane County only if it currently has primary regulatory responsibility for the municipality in which the mine is located.
- (3) *Amount and duration of financial assurance.*
- (a) The amount of financial assurance is set at \$1500 per acre.
- (b) On a case-by-case basis, the zoning administrator shall make adjustments to this amount to reflect as closely as possible the estimated cost to Dane County of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the zoning administrator to assure it equals outstanding estimated reclamation costs.
- (c) Any financial assurance filed with the zoning administrator shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project reclamation permits.
- (d) Upon consultation with the committee, the zoning administrator 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.
- (e) An escrow account, in an institution and subject to an escrow agreement both of which are acceptable to the zoning administrator, 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.
- (f) 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.*
- (a) Financial assurance shall be provided by the operator in the form of a bond issued by a company licensed to issue bonds in this state. Financial assurance shall be payable to Dane County and released upon successful completion of the reclamation measures specified in the reclamation plan.
- (b) Subject to the approval of the zoning administrator, alternate forms of financial assurance may be accepted. These include, but are not limited to, cash, certificates of deposit, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities.

(c) Certificates of deposit shall be automatically renewable or an acceptable alternative form of financial assurance shall be provided before the maturity date. Any interest earned paid on any form of financial assurance shall belong to the operator.

(d) Financial assurance arrangements may include, at the discretion of the zoning administrator, a blend of different options including a lien on the property on which the non-metallic mining site is located or a combination of financial assurance methods.

(5) *Multiple projects.* An operator who obtains a reclamation permit from Dane County for two or more non-metallic 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 non-metallic 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 in writing by the zoning administrator.

(6) *Multiple jurisdictions.*

(a) This paragraph applies where a jurisdictional boundary divides a site. In such cases, the committee is authorized to enter into cooperative financial security arrangements with the other regulatory authority or authorities to avoid requiring the permittee to prove financial assurance with more than one regulatory authority for the same non-metallic mining site.

(b) This paragraph applies where a jurisdictional boundary divides a site otherwise subject to this chapter into two or more sites of less than one acre each. Financial assurance is required for each such site, except that governmental units are not required to obtain financial assurance.

(7) *Certification of completion and release.*

(a) The operator shall notify the zoning administrator, by filing a notice of completion, at the time that the operator believes that reclamation of any portion of the mining site or the entire site is complete. The zoning administrator shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. The zoning administrator may partially release the financial assurance if she or he determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete, the zoning administrator shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.

(b) The zoning administrator shall make a determination of whether or not the certification in par. (a) can be made within 60 days after the request is received.

(c) The zoning administrator 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 reclamation permit is revoked under ss. 74.241–74.243 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 written notice to the zoning administrator delivered by certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the zoning administrator proof of a replacement financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time an acceptable financial replacement assurance is delivered to and accepted by the zoning administrator.

(10) *Changing methods of financial assurance.* The operator of a non-metallic 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 the zoning administrator at least 60 days written notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the zoning administrator.

(11) *Bankruptcy notification.* The operator of a non-metallic mining site shall notify the zoning administrator by certified mail of the commencement of a 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 Dane County. The zoning administrator shall notify the operator in writing that adjustment is necessary and the reasons for it. In consultation with the committee the zoning administrator 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), Wis. 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), Wis. Stats. The criteria in ss. 289.41(6)(b), (d), (e), (f), (g), (h) and (i), Wis. 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), Wis. Stats.

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

[History: 74.142 rep., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.143 rep., OA 44, 2007-08, pub. 02/19/08.]

[74.142-74.143 reserved.]

74.144 FINANCIAL ASSURANCE; PUBLIC NON-METALLIC MINING. The financial assurance requirements of this section do not apply to non-metallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, the county or a municipality.

[74.145-74.15 reserved.]

74.151 PUBLIC NOTICE AND RIGHT OF HEARING. [intro.] The zoning administrator shall, except as provided in s. 74.153, provide public notice and the opportunity for a public informational hearing as set forth below:

(1) *Public notice.*

(a) Except as provided in s. 74.153 for local transportation projects, when the zoning administrator receives an application to issue a reclamation permit that satisfies s. 74.124, she or he shall publish a public notice of the application no later than 30 days after receipt of a complete application.

(b) The notice shall briefly describe the mining and reclamation planned at the non-metallic mining site. The notice shall be published as a class 1 notice pursuant to s. 985.07(1), Wis. Stats., in the official newspaper of Dane County. The notice shall state 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 the zoning administrator or designee to the committee, the applicable local zoning board, if any, 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 s. 74.153 for local transportation projects, the zoning administrator shall arrange for an opportunity for a public informational hearing on an application or request to issue a non-metallic mining reclamation permit as follows:

(a) If it conducts a zoning-related hearing on the non-metallic mine site that is the subject of the reclamation permit application, the committee shall provide the opportunity at this hearing to present written and oral testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a non-metallic mining reclamation permit required by this section. The zoning administrator or designee shall attend the hearing and shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.

(b) If there is no opportunity for a zoning-related hearing on the non-metallic 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 on which the non-metallic mining site is located or proposed may request a public informational hearing. The committee shall hold a public hearing or may authorize the zoning administrator or designee to hold such a hearing, if requested by any of these persons within 30 days of the actual date of public notice under sub. (1). This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the

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

(c) The subject matter and testimony at a hearing held under par. (b) shall be limited to reclamation of the non-metallic mine site.

(3) *Procedures at public hearing.* The following procedures shall apply to hearings held under this section:

(a) The hearing shall be conducted by the committee chairperson or the zoning administrator or designee if authorized by the committee.

(b) There shall be allowed both written and verbal testimony.

(c) Testimony that is unduly repetitive or irrelevant may be rejected.

(d) Procedural matters relating to the conduct of the hearing shall be governed by the committee's rules applicable to its public hearings in general.

(e) The zoning administrator or designee shall record the hearing and retain a copy of the recording for such length of time as the committee may direct.

[History: Title, intro., (1)(a) and (b) and (2) am., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.152 rep., OA 44, 2007-08, pub. 02/19/08.]

[74.152 reserved.]

74.153 PUBLIC NOTICE AND RIGHT OF HEARING; LOCAL TRANSPORTATION-RELATED MINES. No public notice or informational hearing is required for a non-metallic mining reclamation permit issued to a local transportation-related mine pursuant to s. 74.165.

[74.154-74.163 reserved.]

[History: 74.161 rep., OA 44, 2007-08, pub. 02/19/08.]

[History: (2)(b) am., OA 2, 2002-03, pub. 08/13/02; 74.162 rep., OA 44, 2007-08, pub. 02/19/08.]

[History: 74.163 rep., OA 44, 2007-08, pub. 02/19/08.]

74.164 NON-METALLIC MINING RECLAMATION PERMIT ISSUANCE.

(1) *Permit issuance.* Unless denied pursuant to s. 74.171, the zoning administrator shall approve in writing an application submitted pursuant to s. 74.121 to issue a non-metallic mining reclamation permit for a proposed non-metallic mine. The zoning administrator may issue a reclamation permit subject to the conditions in sub. (2), if appropriate. The permit decision shall be made not less than 30 nor more than 90 days following receipt of the complete reclamation permit application and reclamation plan that meets the requirements of s. 74.131 pursuant to this subchapter, unless a public hearing is held pursuant to ss. 74.151-74.153. If a public hearing is held, the permit decision shall be made no more than 60 days after completing the public hearing.

(2) *Conditions.* The zoning administrator may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to

assure compliance with the non-metallic mining reclamation requirements of this chapter. The approvals may not include conditions that are not related to reclamation. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to s. 74.141 prior to beginning mining.

(3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of ss. 74.131-74.135 and provision by the applicant of financial assurance required under ss. 74.141-74.144 and payable to Dane County prior to beginning mining.

[History: (1) and (2) am., OA 2, 2002-03, pub. 08/13/02; Title, (1) and (2) am., intro. rep., OA 44, 2007-08, pub. 02/19/08.]

74.165 NON-METALLIC MINING RECLAMATION PERMIT; AUTOMATIC PERMIT FOR LOCAL TRANSPORTATION-RELATED MINES.

(1) The zoning administrator shall automatically issue an expedited reclamation permit under this section 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 non-metallic 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 WisDOT which are equivalent to, and consistent with, the requirements of this chapter concerning the restoration of non-metallic 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 s. 74.072(10).

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

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

(a) The applicant shall notify the zoning administrator of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.

(b) The applicant shall provide evidence to the zoning administrator to show that the borrow site and its reclamation will comply with applicable zoning requirements including requirements of a conditional use permit (CUP), if any. Where the borrow site is located in an area subject to the zoning controls of a city or village, the zoning administrator may require the applicant to obtain a statement from the city or village's zoning administrator confirming that the borrow site and its reclamation will comply with the applicable zoning requirements of the city or village.

(c) The zoning administrator shall accept the contractual provisions incorporating requirements of WisDOT which are equivalent to, and consistent with, the requirements of this chapter in lieu of a reclamation plan under ss. 74.131-74.135.

(d) The zoning administrator shall accept the contractual provisions in lieu of the financial assurance requirements in ss. 74.141-74.144.

(e) The public notice and hearing provisions of ss. 74.151-74.153 do not apply to non-metallic mining sites that are issued automatic permits under this section.⁹

(f) Mines permitted under this subsection shall pay an annual fee to Dane County as provided in s. 12.27, but shall not be subject to the plan review fee provided in s. 12.21.

(g) The zoning administrator 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 WisDOT requirements which are equivalent to, and consistent with, the requirements of this chapter.

(i) Notwithstanding ss. 74.251 and 74.253, 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.¹⁰

[History: (3)(h) am., OA 2, 2002-03, pub. 08/13/02.]

74.166 NON-METALLIC MINING RECLAMATION PERMIT; EXPEDITED REVIEW. [intro.] An operator of a non-metallic 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. 12.22. The 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 section if the applicant requires a reclamation permit to perform services under contract with a municipality. The request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.

(3) Following receipt of a request under this section, the zoning administrator 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 section shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to ss. 74.151-74.153. This section does not impose an obligation upon the zoning administrator to act upon a reclamation permit application under this section by a specific date.

[History: 74.167 rep., OA 44, 2007-08, pub. 02/19/08.]

[74.167-74.17 reserved.]

⁹Information Note: Local public notice and hearing requirements, if any, regarding zoning decisions still apply.

¹⁰Information Note: A reclamation permit is not required under this chapter for non-metallic mining sites that are operated to provide materials for construction, maintenance and repair of transportation facilities that are subject to WisDOT concerning restoration of the non-metallic mining site, as provided by s. 295.16(1)(c), Wis. Stats.

74.171 PERMIT DENIAL. An application for a non-metallic mining reclamation permit shall be denied as set forth below:

(1) An application to issue a non-metallic mining reclamation permit shall be denied, within the time frame for reclamation permit issuance specified in ss. 74.161-74.167, if the zoning administrator finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide to the zoning administrator an adequate reclamation permit application, reclamation plan, financial assurance or any other submittal required by ch. NR 135, Wis. Admin. Code, or this chapter.

(b) The proposed non-metallic mining site cannot be reclaimed in compliance with the reclamation standards contained in this chapter, ch. NR 135, Wis. Admin. Code, or subch. I. of ch. 295, Wis. Stats.

(c)1. The applicant, or its agent, principal or predecessor has, during the course of non-metallic mining in Wisconsin within 10 years of the reclamation 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 non-metallic mining reclamation.

2. The following may be considered in making the 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 non-metallic mining reclamation permits pursuant to this chapter; the reclamation ordinances of other Wisconsin counties or municipalities; or ch. NR 135, Wis. Admin. Code.

c. Forfeitures of financial assurance.

(d) A denial under this subsection shall be in writing and shall set forth the reasons for denial.

(2) A decision to deny an application to issue a reclamation permit may be reviewed under ss. 74.221 through 74.228, inclusive.

[74.172-74.18 reserved.]

74.181 ALTERNATIVE REQUIREMENTS.

(1) *Scope of alternative requirements approvable.* An operator of a non-metallic mining site may request an alternative requirement to the reclamation standard established in s. 74.11. The zoning administrator may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and the zoning administrator finds that all of the following criteria are met:

(a) The non-metallic mining site, the surrounding property, the mining plan or reclamation plan, or any combination thereof, has a unique characteristic which requires an alternative requirement.¹¹

(b) Unnecessary hardship, peculiar to the non-metallic mining site or plan, will result unless the alternative requirement is approved.

¹¹*For example, a unique characteristic is the existence of a sheer rock face.*

(c) 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.

(2) *Procedures.* The operator of a non-metallic mining site requesting an alternative requirement pursuant to sub. (1) shall comply with the procedures in s. 74.151(2)(b).

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

[History: (1) am., OA 44, 2007-08, pub. 02/19/08.]

[74.182 reserved.]

74.183 ALTERNATIVE REQUIREMENTS; 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.

74.184 ALTERNATIVE REQUIREMENTS; NOTICE TO WISCONSIN DEPARTMENT OF NATURAL RESOURCES. The zoning administrator shall provide notice to the department as set forth in ss. 74.181-74.184. Written notice shall be given to the department at least 10 days prior to any public hearing held under ss. 74.151-74.153 on a request for an alternative requirement under this section. A copy of any written decision on alternative requirements shall be submitted to the department within 10 days of issuance.

[History: am., OA 2, 2002-03, pub. 08/13/02.]

[74.185-74.19 reserved.]

74.191 PERMIT DURATION.

(1) A non-metallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the non-metallic mining site, unless suspended or revoked pursuant to s. 74.322.

(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. 74.201.

[History: (2) am., OA 2, 2002-03, pub. 08/13/02.]

[74.192-74.20 reserved.]

74.201 PERMIT TRANSFER. [intro.] A non-metallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the following conditions:

(1) A non-metallic mining reclamation permit may be transferred to a new operator upon submittal to the zoning administrator of proof of financial assurance and a

certification in writing by the new permit holder that all conditions of the reclamation permit will be complied with.

(2) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the zoning administrator and the zoning administrator makes a written finding that all conditions of the reclamation 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.

74.202 PREVIOUSLY PERMITTED SITES. For any non-metallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to ch. NR 135, Wis. Admin. Code, that becomes subject to reclamation permitting authority of Dane County the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by Dane County pursuant to s. 74.231.¹²

[74.203-74.22 reserved.]

74.221 APPEALS; APPELLATE BODY.

(1) The director is authorized to appoint a hearing examiner to hear appeals brought pursuant to this chapter.

(2) The hearing examiner shall be an attorney licensed to practice law in Wisconsin and shall have no financial or personal interest in the outcome of a matter brought before her or him.

(3) The expense of hearing examiners shall be a cost of the non-metallic mining reclamation program and shall be reimbursed solely from fees associated with the program.

74.222 APPEALS; WHO MAY APPEAL. [intro.] In addition to any other right provided by law, any person filing a written request with the director for a hearing shall have the right to a hearing which shall be treated as a contested case if:

(1) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;

(2) There is no evidence of legislative intent that the interest is not to be protected;

(3) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and

(4) There is a dispute of material fact.

74.223 APPEALS; WHAT MAY BE APPEALED. Only the following actions of the county may be appealed:

(1) The issuance, modification or denial of a reclamation permit.

(2) For a person holding a reclamation permit,

(a) An order issued under s. 295.19(1), Wis. Stats., requiring an operator to comply with, or to cease violating, subch. I of ch. 295, Wis. Stats., rules promulgated under subch.

¹²*Information Note: This could happen if, for example, a municipality's program was terminated by the municipality or revoked by the Department-in such cases, non-metallic mine sites would revert to a county program.*

I of ch. 295, Wis. Stats., this ordinance, a non-metallic mining reclamation permit or an approved non-metallic mining reclamation plan.

(b) An order suspending or revoking a non-metallic mining reclamation permit as authorized in this ordinance.

(c) An order directing an operator to immediately cease an activity regulated under subch. I of ch. 295, Wis. Stats., under rules promulgated under subch. I of ch. 295, Wis. Stats., or under this ordinance until the necessary non-metallic mining reclamation plan approval is obtained.

(d) An order to abate violations of this ordinance which has been submitted to the district attorney, the corporation counsel, or the attorney general for enforcement.

74.224 APPEALS; FILING FEES. A person taking an appeal under this section shall pay the filing fee set forth in s. 12.33.

74.225 APPEALS; HOW TAKEN. An appeal is commenced by the filing of a notice of appeal with the director together with payment of the filing fee. The notice of appeal shall contain a statement setting forth the nature of the matter contested together with a statement of the remedy desired.

74.226 APPEALS; HEARING ON APPEAL.

(1) *Time of hearing.* The hearing examiner shall arrange for a hearing on an appeal within 15 days of receipt of the notice of appeal filed or mailed under s. 74.225 and shall serve the appellant with notice of such hearing by mail or personal service at least 10 days before such hearing.

(2) *Conduct of hearing.* At the hearing, the appellant and the zoning administrator may be represented by an attorney and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the hearing examiner. The hearing examiner may issue subpoenas. An attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and must be served in the manner provided in s. 805.07(5), Wis. Stats. The attorney shall, at the time of issuance, send a copy of the subpoena to the hearing examiner.

(3) *Evidentiary rules.* Except as provided in s. 901.05, Wis. Stats., the hearing examiner shall not be bound by common law or statutory rules of evidence, but shall admit all testimony having reasonable probative value, excluding that which is immaterial, irrelevant or unduly repetitious. The hearing examiner may take official notice of any generally recognized fact or established technical or scientific fact, but parties shall be notified either before or during hearing or by full reference in preliminary reports, or otherwise, of the facts so noticed, and the parties shall be afforded an opportunity to contest the validity of the official notice.

(4) *Record of hearing.* The hearing examiner shall take notes of the testimony and shall mark and preserve all exhibits. The hearing examiner may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the county.

74.227 APPEALS; FINAL DETERMINATION.

(1) Within 20 days of completion of the hearing conducted under s. 74.226 and the filing of briefs, if any, the hearing examiner shall mail or deliver to the appellant the written determination stating the reasons therefor. Such determination shall be a final determination.

(2) A determination following a hearing substantially meeting the requirements of s. 74.226 following such hearing shall also be a final determination.

74.228 APPEALS; JUDICIAL REVIEW.

(1) Any party to a proceeding resulting in a final determination may seek review thereof by certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the hearing examiner for further proceedings consistent with the court's decision.

(2) 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 furnished 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.

[74.229-74.23 reserved.]

SUBCHAPTER IV ADMINISTRATION

74.231 PERMIT MODIFICATION; BY DANE COUNTY. A non-metallic mining reclamation permit issued under this chapter may be modified by the zoning administrator if she or he finds that, due to changing conditions, the non-metallic mining site is no longer in compliance with ch. NR 135, Wis. Admin. Code, or this chapter. Such modification shall be by an order modifying the reclamation permit in accordance with ss. 74.321-74.325. 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 ch. NR 135, Wis. Admin. Code, or this chapter. The application for reclamation permit or plan modification shall be acted on using the standards and procedures of this chapter.

74.232 PERMIT MODIFICATION; AT THE OPERATOR'S OPTION. If a non-metallic mine operator holds a reclamation permit issued under this chapter and desires to modify such permit or reclamation plan approved under this chapter, she or he may request such modification by submitting a written application for such modification to the zoning administrator. The application for reclamation permit or plan modification shall be acted on using the standards and procedures of this chapter.

74.233 PERMIT MODIFICATION; REQUIRED BY THE OPERATOR. A non-metallic mine operator who holds a reclamation permit 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 approved reclamation plan. Such application for reclamation permit modification shall be acted on using the standards and procedures of this chapter.¹³

74.234 PERMIT MODIFICATION; REVIEW. All actions by the zoning administrator on reclamation permit modifications requested or initiated under this section are subject to review under ss. 74.221 through 74.228, inclusive.

[74.235-74.24 reserved.]

74.241 PERMIT SUSPENSION AND REVOCATION; GROUNDS. The zoning administrator may suspend or revoke a non-metallic mining reclamation permit issued pursuant to this chapter if the zoning administrator 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.
- (3) Failed on a repetitive and significant basis to follow the approved reclamation plan.

74.242 PERMIT SUSPENSION AND REVOCATION; PROCEDURES. If the zoning administrator finds grounds for suspending or revoking a non-metallic mining reclamation permit set forth in s. 74.241, she or he may issue a special order suspending or revoking such permit as set forth in s. 74.322.

74.243 PERMIT SUSPENSION AND REVOCATION; CONSEQUENCES.

- (1) If the zoning administrator makes any of the findings in s. 74.241, she or he may suspend a non-metallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct non-metallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the zoning administrator pursuant to ss. 74.321-74.325.
- (2) If the zoning administrator makes any of the findings in s. 74.241, she or he may revoke a non-metallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to Dane County. Dane County may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

[74.244-74.25 reserved.]

¹³*Information Note: Modification of the reclamation permit must be requested by the operator in such circumstances under s. NR 135.27, Wis. Admin. Code.*

74.251 ANNUAL OPERATOR REPORTING; CONTENTS AND DEADLINE.

[intro.] Annual reports that satisfy the requirements of this section shall be submitted by the operators of non-metallic 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 non-metallic mining site, including legal description, tax key number or parcel identification number if available.

(c) The identification number of the applicable non-metallic mining reclamation permit, if assigned by the zoning administrator.

(d) The acreage currently affected by non-metallic 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 non-metallic mining site described herein complies with all conditions of the applicable non-metallic mining reclamation permit and ch. NR 135, Wis. Admin. Code."

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

(3) *When reporting may end.* Annual reports shall be submitted to the zoning administrator by an operator for all active and intermittent mining sites for each calendar year until non-metallic mining reclamation at the site is certified as complete pursuant to s. 74.293 or at the time of release of financial assurance pursuant to s. 74.141(7).

[History: (2) am., OA 44, 2007-08, pub. 02/19/08.]

[74.252 reserved.]

74.253 ANNUAL OPERATOR REPORTING; RETENTION OF ANNUAL REPORTS.

Annual reports submitted under s. 74.251 shall be retained by the zoning administrator 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 department upon written request or during its inspection or audit activities carried out pursuant to ch. NR 135, Wis. Admin. Code.

[History: am., OA 2, 2002-03, pub. 08/13/02.]

[74.254-74.28 reserved.]

74.281 REGULATORY REPORTING AND DOCUMENTATION; REPORTING.

The zoning administrator shall send an annual report to the department by March 31st of each calendar year. The reports shall include the following information for the previous year's non-metallic mining reclamation program:

(1) The total number of non-metallic mining reclamation permits in effect.

- (2) The number of new reclamation permits issued within the jurisdiction of Dane County.
 - (3) The number of acres approved for non-metallic mining and the number of acres newly approved in the previous year.
 - (4) The number of acres being mined or un-reclaimed acres.
 - (5) The number of acres that have been reclaimed and have had financial assurance released pursuant to s. 74.141(7).
 - (6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this subchapter pursuant to ss. 74.291 and 74.292.
 - (7) The number and nature of alternative requirements granted, reclamation permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.
- [History: (6) am., OA 2, 2002-03, pub. 08/13/02; (4) am., OA 44, 2007-08, pub. 02/19/08.]

74.282 REGULATORY REPORTING AND DOCUMENTATION; DOCUMENTATION. The zoning administrator shall maintain the information set forth below, and make it available to the department for that agency's audit of Dane County's reclamation program pursuant to ch. NR 135, Wis. Admin. Code:

- (1) Documentation of compliance with ch. NR 135, Wis. Admin. Code, and this chapter.
- (2) The procedures employed by Dane County regarding reclamation plan review, and the issuance and modification of reclamation 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 department's 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. 74.181.
- (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 s. 74.141(7).
- (12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of Dane County to implement its non-metallic mining reclamation program under this chapter.
- (13) The amount of fees collected in comparison to the amount of money actually expended for non-metallic mining reclamation program administration.

(14) Any other performance criterion necessary to ascertain compliance with ch. NR 135, Wis. Admin. Code.

[History: (10) am., OA 2, 2002-03, pub. 08/13/02.]

[74.283-74.29 reserved.]

74.291 COMPLETED RECLAMATION-REPORTING, CERTIFICATION AND EFFECT; REPORTING. The operator of a non-metallic mining site may certify completion of reclamation for a portion or all of the non-metallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and ch. NR 135, Wis. Admin. Code.

74.292 COMPLETED RECLAMATION-REPORTING, CERTIFICATION AND EFFECT; REPORTING OF INTERIM RECLAMATION. The operator of a non-metallic 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 ch. NR 135, Wis. Admin. Code. Reporting of interim reclamation shall be done according to the procedures in s. 74.291.

74.293 COMPLETED RECLAMATION-REPORTING, CERTIFICATION AND EFFECT; CERTIFICATION OF COMPLETED RECLAMATION. The zoning administrator shall inspect a non-metallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to section 74.291 or 74.292 within 60 days of receipt, and make a determination in writing in accordance with s. 74.141(7)(c). If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with ss. 74.131-74.135, the zoning administrator shall issue the mine operator a written certificate of completion.

[History: am., OA 2, 2002-03, pub. 08/13/02.]

74.294 COMPLETED RECLAMATION-REPORTING, CERTIFICATION AND EFFECT; EFFECT OF COMPLETED RECLAMATION. If reclamation is certified by the zoning administrator as complete under s. 74.293 for part or all of a non-metallic mining site, then:

(1) No fee shall be assessed under s. 12.27 for the area so certified.

(2) The financial assurance required by ss. 74.141-74.144 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 s. 74.292 and so certified under s. 74.293, financial assurance for reclaiming the certified area may be reduced to reflect reduced need.

[History: intro. am., OA 2, 2002-03, pub. 08/13/02.]

74.295 COMPLETED RECLAMATION-REPORTING, CERTIFICATION AND EFFECT; EFFECT OF INACTION FOLLOWING REPORT OF COMPLETED RECLAMATION. If the zoning administrator fails to provide a written response within 60 days as required by s. 74.293 for an area of the mine site reported as reclaimed or

interim reclaimed, any annual fee paid to Dane County for it under s. 12.27 shall be refunded.

[74.296-74.299 reserved.]

74.30 PERMIT TERMINATION. When all final reclamation required by a reclamation plan conforming to ss. 74.131-74.135 and required by this chapter is certified as complete pursuant to ss. 74.141(7) and 74.293, the zoning administrator shall issue a written statement to the operator of the non-metallic mining site, thereby terminating the reclamation permit.

SUBCHAPTER V ENFORCEMENT

74.31 ENFORCEMENT; RIGHT OF ENTRY AND INSPECTION. For the purpose of ascertaining compliance with the provisions of subch. I of ch. 295, Wis. Stats., ch. NR 135, Wis. Admin. Code, or this chapter, any authorized officer, agent, employee or representative of Dane County may inspect, on at least 4 hour advance verbal notice to the operator, any non-metallic mining site subject to this chapter as provided below:

(1) No person may refuse entry or access onto a non-metallic mining site of a duly authorized officer, employee or agent of Dane County or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the non-metallic mining reclamation permit, this chapter, ch. NR 135, Wis. Admin. Code, or subch. I of ch. 295, Wis. 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 non-metallic mining site.

(3) If requested, the zoning administrator shall furnish to the operator a written report of its inspection under this section, setting forth all relevant observations, information and data which relate to the site's compliance status under this chapter and subch. I of ch. 295, Wis. Stats.

[74.32 reserved.]

74.321 ENFORCEMENT; ENFORCEMENT ORDERS. The zoning administrator may issue orders as set forth in s. 295.19(1)(a), Wis. Stats., to enforce subch. I of ch. 295, Wis. Stats., ch. NR 135, Wis. Admin. Code, this chapter, a reclamation permit issued pursuant to this chapter or a reclamation plan required by ss. 74.131-74.135 and a reclamation permit issued under this chapter. A violation of this chapter, an order or reclamation permit issued pursuant to this chapter or a reclamation plan required by ss. 74.131-74.135 and a reclamation permit issued under this chapter shall be considered a violation of subch. I of ch. 295, Wis. Stats., and ch. NR 135, Wis. Admin. Code.

74.322 ENFORCEMENT; SPECIAL ORDERS. The zoning administrator may issue a special order as set forth in ss. 295.19(1)(b) and (c), Wis. Stats., suspending or

revoking a non-metallic mining reclamation permit pursuant to ss. 74.241-74.243, or directing an operator to immediately cease an activity regulated under subch. I of ch. 295, Wis. Stats., ch. NR 135, Wis. Admin. Code, or this chapter until the necessary plan approval is obtained.

74.323 ENFORCEMENT; REVIEW OF ORDERS. A person holding a reclamation permit who is subject to an order pursuant to ss. 74.321-74.324 shall have the right to review the order in a hearing conducted under ss. 74.221 through 74.228, inclusive.

74.324 ENFORCEMENT; CITATIONS. The zoning administrator may issue a citation under ch. 2 to collect forfeitures to enforce this chapter, a reclamation permit issued pursuant to this chapter or a reclamation plan required by ss. 74.131-74.135. The issuance of a citation 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.

74.325 ENFORCEMENT; REFERRAL FOR PROSECUTION. The zoning administrator may submit any order issued under ss. 74.321-74.324 to abate violations of this chapter to the corporation counsel or the attorney general for enforcement. The corporation counsel or the attorney general may enforce those orders.

[74.326-74.329 reserved.]

74.33 PENALTIES. [intro.] Any violation of subch. I of ch. 295, Wis. Stats., ch. NR 135, Wis. Admin. Code, this chapter, a reclamation permit issued pursuant to this chapter or a reclamation plan required by ss. 74.131-74.135 may result in forfeitures as provided in s. 295.19(3), Wis. Stats., as follows:

(1) Any person who violates ch. NR 135, Wis. Admin. Code, or an order issued under ss. 74.321-74.324 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 ss. 74.321-74.324 is suspended, stayed or enjoined, this penalty does not accrue.

(2) Except for the violations referred to in sub. (1), any person who violates subch. I of ch. 295, Wis. Stats., ch. NR 135, Wis. Admin. Code, any reclamation plan approved pursuant to this chapter or an order issued pursuant to ss. 74.321-74.324 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 ss. 74.321-74.324 is suspended, stayed or enjoined, this penalty does not accrue.

[74.34-74.52 reserved.]

SUBCHAPTER VI

REGISTRATION OF MARKETABLE NON-METALLIC MINERAL DEPOSITS

74.53 DEFINITIONS. In this subchapter:

- (1) *Contiguous parcels* mean 2 or more parcels of land that share a common property boundary or have property boundaries that meet on at least one point. For purposes of this definition, parcels are contiguous notwithstanding the existence of public or private roads or easements.
- (2) *Marketable non-metallic mineral deposit* means a non-metallic mineral deposit that meets the criteria in s. 74.54.
- (3) *Objecting authority* means the entity designated as the Dane County Zoning Agency as well as any municipal zoning authority having jurisdiction over land proposed to be registered under this subchapter.
- (4) *Permitted or conditional use* means conducting non-metallic mining under any existing zoning if one of the criteria in s. 74.56(3)(b) is met.
- (5) *Zoning authority* means the committee or any municipal zoning entity having authority to zone the land which a landowner seeks to register under this subchapter.

74.54 MARKETABLE NON-METALLIC MINERAL DEPOSIT. A marketable non-metallic mineral deposit is one which can be or is reasonably anticipated to be commercially feasible to mine and has significant economic or strategic value. The significant economic or strategic value must be demonstrable using geologic, mineralogical or other scientific data, due to the deposit's quality, scarcity, location, quantity or proximity to a known user.

74.55 WHO MAY REGISTER A MARKETABLE NON-METALLIC MINERAL DEPOSIT. Beginning on June 1, 1994, a landowner may register his or her land pursuant to this subchapter.

74.56 REGISTRATION REQUIREMENTS.

- (1) The registration shall include a legal description delineating the land and a certification and delineation by a registered geologist or a registered professional engineer that the land has a marketable non-metallic mineral deposit. In making this certification, the registered geologist or registered professional engineer shall describe the type and quality of the non-metallic mineral deposit, the areal extent and depth of the deposit, how the deposit's quality, extent, location and accessibility contribute to its marketability, and the quality of the deposit in relation to current and anticipated standards and specifications for this type of material. This certification shall be supported by logs or records of drilling, boring, geophysical surveys, records of physical inspections of outcrops or equivalent scientific data.
- (2) The certification shall include the registered geologist's or registered professional engineer's seal affixed to this statement: "I hereby certify that this document contains a description of a marketable non-metallic mineral deposit consistent with the requirements of Chapter NR 135, Wisconsin Administrative Code."

(3)(a) A person wishing to register land pursuant to this subchapter shall provide evidence that non-metallic mining is a permitted or conditional use for the land under zoning in effect on the day in which notice of intent to register the site is provided to the zoning authorities pursuant to sub. (4).

(b) Non-metallic mining is a permitted or conditional use for land if any of the following apply:

1. There is no existing zoning.
2. The land is in a zoning category that expressly states that non-metallic mining is either a permitted use or may be allowed as a conditional use.
3. The land is in a zoning category that allows general uses and the zoning authority allows non-metallic mining as a permitted or conditional use as a subset of the general uses listed for that zoning category, even though non-metallic mining is not expressly referred to in the zoning.

(c) If the existing zoning requires a conditional use permit for non-metallic mining, there is no need to apply for or obtain a conditional use permit in order to register the land pursuant to this subchapter.

(4) A copy of the notice of intent to register and supporting information shall be provided to each affected zoning authority, the Dane County Zoning Administrator, the cities, villages and towns in which the deposit is located or the boundaries of which are within one-quarter mile of the deposit, and the WDNR at least 120 days prior to filing of the registration. The Dane County Zoning Administrator shall maintain records of proposed registrations of lands containing marketable non-metallic mineral deposits.

(5) The registration shall include a certification by the landowner and binding on the landowner and his or her successors in interest that the landowner will not undertake any action that would permanently interfere with present or future extraction of the non-metallic mineral deposit for the duration of the registration.

(6) Registration shall be accomplished by recording the information required by this section, the date of recording, and the date registration expires as a notice recordable in the office of Dane County Register of Deeds pursuant to s. 59.43(1)(a), Wis. Stats., no sooner than 121 days and no later than 240 days after notice has been provided pursuant to sub. (4).

74.57 REGISTRATION OF CONTIGUOUS PARCELS. Contiguous parcels of land meeting all of the following criteria may be included in one registration under this subchapter.

- (1)** The parcels are owned by the same person.
- (2)** The parcels contain a marketable non-metallic mineral deposit as defined in s. 74.54.
- (3)** The parcels are contiguous as defined in s. 74.53(1).

74.58 OBJECTION TO REGISTRATION BY A ZONING AUTHORITY.

(1) The objecting authority for land that a landowner intends to register as a marketable non-metallic mineral deposit may object to the proposed registration only by giving, to the landowner, notice of intent to object and the reasons for objection no later than 60 days after receiving notice of intent pursuant to s. 74.56(3). Notice of intent to

object and the reasons for objection shall be given by certified mail. A zoning authority may object to registration only on the grounds of one of the following conditions:

(a) Zoning in effect on the date that notice of intent to register land containing a deposit was provided to the zoning authority does not permit or conditionally permit non-metallic mining under the criteria in s. 74.56(3)(b); or

(b) There is not a marketable non-metallic mineral deposit, as defined in s. 74.54, on the land proposed to be registered.

(2) A landowner who is notified under sub. (1) of the zoning authority's intent to object may withdraw or modify the proposed registration of a deposit.

(3) A zoning authority may sustain its objection to registration only by filing suit in the circuit court with jurisdiction over the land to be registered within 60 days of providing notice to object pursuant to sub. (1). The zoning authority may prevail in this suit only if it demonstrates by a preponderance of credible evidence that, notwithstanding any modifications pursuant to sub. (2), one of the conditions in sub. (1)(a) or (b) exists.

74.59 DURATION AND RENEWAL OF REGISTRATION.

(1) Registration of land containing a marketable non-metallic mineral deposit expires 10 years after the date registration is recorded unless renewed according to this section.

(2) A landowner may not renew registration of land containing a marketable non-metallic mineral deposit if the deposit has been commercially depleted.

(3)(a) A landowner may renew registration of land containing a marketable non-metallic mineral deposit upon which mining has not yet taken place for one additional 10-year term without a new determination of marketability by notifying the zoning authority and recording a notice renewing registration with the Dane County Register of Deeds. Renewal of registration shall be recorded at least 10 days and no more than one year before registration expires. A zoning authority may object to this one-time renewal according to the procedures of s. 74.58, but only on the grounds that there is no longer a marketable non-metallic mineral deposit. Once this one-time renewal of registration has expired, the landowner may register land containing the deposit again in accordance with this subchapter.

(b) A landowner may not submit a notice of intent to register land containing a non-metallic mineral deposit more than one year before the expiration of current registration.

(4) Notwithstanding sub. (3), a person may continue to renew registration in accordance with this section of land on which non-metallic mining is taking place for an unlimited number of 10-year periods, so long as active mining is taking place on any portion of the registered land.

(5) Registration of land containing a marketable non-metallic mineral deposit may not be rescinded by the zoning administrator or by the landowner or his or her successors or assigns except by expiration in accordance with this section or by termination pursuant to s. 74.61.

74.60 PREVIOUSLY REGISTERED DEPOSITS.

(1) Land that has been registered as an economically viable non-metallic mineral deposit under s. 144.9407(9), 1993 Stats., or s. 295.20, Stats., prior to December 1, 2000

shall become a registered marketable non-metallic mineral deposit to which this subchapter applies.

(2) Land registered under sub. (1) shall remain registered as a marketable non-metallic mineral deposit for a period that ends 10 years after the initial date of registration was recorded as a notation in the office of the Dane County Register of Deeds. After this 10-year registration period, the land may be re-registered as a marketable non-metallic mineral deposit in accordance with s. 74.56. Land which has become registered pursuant to sub. (1) may not be re-registered for a 10-year term as provided in s. 74.59(3).

74.61 TERMINATION OF REGISTRATION OF A DEPLETED DEPOSIT. The landowner may terminate registration under this subchapter of land containing a marketable non-metallic mineral deposit where the deposit has been depleted, or where the deposit is no longer economically viable to mine. Termination of registration shall be accomplished by the landowner filing a statement of the foregoing, with supporting certification by a registered geologist or registered professional engineer, at the office of the Dane County Register of Deeds.

74.62 RELATIONSHIP TO PLANNING AND ZONING.

(1) After receipt of a notice of intent to register pursuant to s. 74.56(3) the county may not, by zoning, granting a variance, or other official action or inaction, permit the erection of permanent structures on, or otherwise permit the use of any subsequently registered land containing a marketable non-metallic mineral deposit in a manner that would permanently interfere with the present or future extraction of the non-metallic mineral deposit. This limitation begins when notice of intent to register is received.

(2) Any request by the owner of registered land or his or her agent for a permit, grant of authority, variance, zoning change or other official action shall be accompanied by a copy of the registration, certified by the Dane County Register of Deeds as the recorded document.

(3) The limitation of government action in sub. (1) applies to land where a zoning authority has provided notice of intent to object to registration pursuant to s. 74.57(1), until the time the registration expires, is terminated, or the objecting authority finally prevails in court action pursuant to s. 74.58(3) to sustain its objection.

(4)(a) Notwithstanding sub. (1), land which contains a marketable non-metallic mineral deposit and upon which mining has not begun on any portion may be rezoned if necessary to implement a master plan, comprehensive plan or land use plan which has been lawfully adopted by an appropriate governing body at least one year prior to the rezoning.

(b) Any zoning change to implement a lawfully adopted master plan, comprehensive plan or land use plan does not apply to land containing a registered marketable non-metallic mineral deposit until the expiration of the current registration period or the one-time registration renewal period under s. 74.59(3), whichever comes last. A zoning change which has been adopted pursuant to this subsection may be used by a zoning authority as the basis for objecting, pursuant to s. 74.58(1)(a), to re-registration of land containing a marketable non-metallic mineral deposit.

(c) Registration of land containing a marketable non-metallic mineral deposit does not relieve the property owner from the obligation to obtain all necessary permits and

approvals to be able to mine the deposit, nor does mineral registration create a presumption that these permits will be granted. However, land use plans and zoning ordinances adopted by the county, a municipality or an agency shall make all reasonable provisions to preserve identified marketable non-metallic mineral deposits.

74.63 RIGHT OF EMINENT DOMAIN. Nothing in this subchapter affects any state, county or municipal authority to acquire property by eminent domain.

74.64 EXCEPTIONS. Nothing in this subchapter shall prohibit:

(1) A use of land permissible under a zoning ordinance on the day before the land containing a marketable non-metallic mineral deposit was registered pursuant to this subchapter.

(2) Acquisition of land containing a registered marketable non-metallic mineral deposit by the county, a municipality or other governmental unit for a public purpose.

[74.65–74.99 reserved.]

[HISTORY: ch. 74 cr., Sub. 1 to OA 42, 2000-01, pub. 08/02/01.]

END OF CHAPTER