

SECTION 2. NR 340.05(3m) is created to read:

NR 340.05(3m) In addition to all other requirements of this chapter, reclamation plans required by this section shall include a designation of post-mining land use and comply with the reclamation standards established in ch. NR 135.

SECTION 3. NR 340.06(3)(i) is created to read:

NR 340.06(3)(i) Reclamation as proposed in the plan required by s. NR 340.05 shall comply with the reclamation standards established in ch. NR 135.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect on December 1, 2000.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

ATTACHMENT 6

**Mailing/Contact List
For Nonmetallic Mining Reclamation
Rule Making Process**

December, 1999

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136

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DATE: July 14, 2000

FILE REF: NR 135

TO: Bill Wenzel, Senate Committee on Agriculture, Environmental Resources
and Campaign Finance ReformFROM: Kevin Kessler, DNR *KK*
Policy Chief, Bureau of Waste ManagementDan Graff, DNR *D. Graff*
Attorney, Bureau of Legal Services

SUBJECT: Definition of Nonmetallic Mining Site in s. NR 135.03(16)(b)(2), Wis. Adm. Code

This is in response to questions that have been raised about the definition of "nonmetallic mining site" in proposed s. NR 135.03(16), Wis. Adm. Code. Senator Robson wrote to Senator Clausing on June 15 asking Senator Clausing's committee to examine the NR 135 rule (Clearinghouse Rule 00-029) because Sen. Robson is concerned that DNR may have adopted a definition of "nonmetallic mining site" which is not allowed under the statute. The rule has already been transmitted to the Revisor of Statutes for publication since 30 days had expired prior to the scheduling of a committee hearing. Thank you for discussing this issue with DNR staff.

The Department is very concerned that our rules are carefully drafted and reviewed to assure that they never exceed statutory authority. The Department is also concerned about the timeliness of publication for this particular rule since counties are presently drafting their budgets for next year. We wanted to give you some additional background and rationale on this issue before you advise Senator Clausing on how to proceed.

The Provision in Question: Both s. 295.11(6), Stats. and s. NR 135.03(16) contain definitions of the term "nonmetallic mining site." Unlike the statute, the rule definition of this term in NR 135 contains an exclusion which states that a "nonmetallic mining site" does not include the following:

"Separate, previously mined areas that are not used for nonmetallic mineral extraction ... and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads." [NR 135.03(16)(b)2.]

Although this language is not contained within the definition of a mining site in the statute, it is based upon other statutory language and was added in the rule for clarification and to be consistent with other provisions of Chapter 295, Statutes.

Legal Authority for this Provision: The Department believes that the exclusion in question is necessary and consistent with Chapter 295 of the statutes and that there is authority for this provision. The definition of "nonmetallic mining site" in s. 295.11(6)(a)2. states that the mining site includes:



“storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.” (emphasis added).

In addition, the definition of “nonmetallic mining” in s. 295.11(3)(a) states that mining includes:

“Operations or activities for the extraction from the earth ... of aggregates ... or ... minerals...”

Finally, in s. 295.11(3)(b), it states that mining includes:

“On-site processes that are related to the extraction of mineral aggregates or nonmetallic minerals, such as stockpiling ..., blending ..., crushing, screening, scalping and dewatering.” (emphasis added).

The portion of the rule in question is completely consistent with these provisions of the statute. It does not exclude locations where “extraction” is occurring (consistent with s. 295.11(3)(a)). It does exclude storage and processing areas that are not contiguous to the area being mined (consistent with the requirement in s. 295.11(3)(b) that it has to be “on-site” with respect to areas where excavation is occurring). Finally, the rule provision is consistent with s. 295.11(6)(a)2. that states that only storage and processing areas which are in or contiguous to areas being mined are included in the mine site.

The Department is required and authorized in s. 295.12 to adopt rules for the administration of the chapter. We believe that the provision in question is an appropriate clarification in rules of the statutory requirements. Not only does the statute authorize this provision, but in our opinion it is the most reasonable interpretation of the statutes cited above when they are read together.

Additional Background: The Department included this provision in the administrative rule within the definition of “nonmetallic mining site” in response to a specific request by the advisory committee for clarification. This committee includes representatives of state, county and local government organizations, an environmental group, and industry organizations. Except for the Legislative Clearinghouse question that was raised, our public comment and hearing record contains many statements of consensus and support for this rule and no questions or objections with respect to this provision.

The Legislative Clearinghouse comments on the rule raised a question about this definition. Department staff met with Legislative Clearinghouse staff on April 6, 2000 regarding this and other comments. We believe that we had consensus with Clearinghouse staff on this issue, but perhaps our written response summary was too brief. That response summary may have led to Senator Robson’s concern. We hope that the additional detailed analysis above is useful and leads the Committee to the conclusion that the provision in question is authorized, is appropriate and is fully consistent with the statute.

Please contact the Department if there are additional questions or concerns.

cc: George Meyer - DNR
Paul Heinen - DNR
Elizabeth Kluesner - DNR
John Stolzenberg - Legislative Council
David Austin - Senator Robson’s office

JUN 05 2000

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. SW-18-95

Legislative Council Rules Clearinghouse Number 00-029

Subject of Rules Nonmetallic mining reclamation

Date of Transmittal to Presiding Officers May 30, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 135, Wis. Adm. Code

Nonmetallic mining reclamation

Board Order No. SW-18-95

Clearinghouse Rule No. 00-029

Statement of Need

Chapter NR 135 is the proposed nonmetallic mining reclamation code required under ch. 295, Stats. Nonmetallic mining is a widespread activity in Wisconsin. The variety of geologic environments provides for a diverse industry. An estimated 2,000 mines provide aggregate for construction, sand and gravel for road building and maintenance, and dolomite for agricultural lime. A smaller number of quarries provide dimension stone for monuments, volcanic andesite for shingles, peat for horticulture and landscaping, industrial sand for export out-of-state for the oil industry and a considerable variety of materials for other uses.

The law requires the Department to implement the nonmetallic mining reclamation program. The overall goal of ch. NR 135 is to provide uniform statewide regulation of nonmetallic mining reclamation. It does this by establishing uniform statewide reclamation standards and setting up a locally administered reclamation permit program. The DNR will provide a model ordinance for use/adoption by counties and interested municipal governments. All counties are required to adopt an ordinance that establishes a reclamation program that is capable of ensuring compliance with the uniform state reclamation standards contained in the rule. Also, cities, towns and villages may choose to adopt the ordinance and administer a program within their jurisdiction. County and municipal reclamation programs are established through the enactment of an ordinance that implements the statewide reclamation standards.

During the first three years of the program, an "automatic permit" is available to existing mines. This option is not valid for new mines or after the first 3 years of the program. In order to receive an "automatic permit" an operator will complete a brief application form, pay the annual fees, arrange to provide a reclamation plan (if none exists) and provide financial assurance. Local borrow pits are exempt from the reclamation plan, public information hearings and separate financial responsibility if the mine is under contract with a municipality.

The proposed rule will take effect on December 1, 2000.

At the January 26, 2000 meeting, the Natural Resources Board approved the final adoption of this rule. On February 4, 2000 the Department was informed by the Assembly Chief Clerk's Office that the Assembly and Senate Chief Clerks would not accept the Department's submittal of Clearinghouse Rule No. 95-041 to the Legislature because of s. 227.14(6)(c), Stats. That statute provides that an administrative rule is withdrawn if it has not passed legislative review and been filed with the Revisor of Statutes by December 31 of the 4th year following its original submittal for Legislative Council review. Therefore, the Department reinitiated the rulemaking process.

Modifications as a Result of Public Hearing

No modifications were made as a result of public hearing on Clearinghouse Rule No. 00-029. However, there was substantial concern raised at the first set of public hearings on Clearinghouse Rule No. 95-041 relating to areas where there was limited rule drafting flexibility due to statutory

requirements. Legislation was proposed that would amend the authorizing statutes to address the areas of concern. These areas included reclamation standards, increased flexibility for county and local ordinances, permitting and public hearing, regulation of mining operations and registration.

After these statutory changes were made, the Wis. Transportation Builders Association wanted local borrow pits to be exempt from ch. NR 135. A compromise was reached, but it also required a slight statutory change. That change has been made and now borrow pits will continue to be regulated under ch. NR 135, but they are not required to prepare a reclamation plan or provide financial assurance.

Appearances at the Public Hearing and Their Position

There were no appearances at the public hearing.

Response to Legislative Council Rules Clearinghouse Report

See attachment.

Final Regulatory Flexibility Analysis

See attachment.

**Responsiveness Summary for Comments on March 2000 Proposed
Chapter NR 135, Wis. Adm. Code**

A. Hearing

A public hearing was held on proposed NR 135 on Monday, March 13th 2000. No members of the public appeared who desired to present testimony.

B. Written Comments

One written comment was submitted by a member of the public during the comment period, which ended March 17th, 2000. This was a letter of support from Jim Burgener, Marathon County Zoning Administrator and a member of the committee that advised the Department during development of proposed NR 135 since 1994. On behalf of the Wisconsin County Code Administrators, Mr. Burgener recommended the Board adopt NR 135.

C. Legislative Council Rules Clearinghouse Comments

There was also a Clearinghouse Report on proposed NR 135 by the Wisconsin Legislative Council Staff, as required by s. 227.15, Stats. for all proposed administrative rules. This report was sent to the Department by the Wisconsin Legislative Council's Rules Clearinghouse on March 6, 2000. The Clearinghouse Report was titled "Clearinghouse Rule 00-029". Comments from the Rules Clearinghouse report, and Department responses, are discussed by classes of comment below.

1. Statutory Authority

A number of comments questioned the statutory authority for definitions in the proposed rule that appeared inconsistent with corresponding definitions in s. 295.11, Stats. The Department has accordingly revised the definitions in the final draft of proposed NR 135, except as discussed below.

Clearinghouse Comment:

What is the statutory authority for the definition of "nonmetallic mine site" to include the entirety of s. NR 135.03(16)(a)6.?

Department Response:

The text in question does not appear verbatim in the corresponding statutory definition of “nonmetallic mine site” in s. 295.11(6), Stats. However, this part of the definition clarifies a nonmetallic mine site includes “areas where . . . reclamation activities are carried out or structures needed for . . . reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.” These areas are “storage . . . areas” as defined in s. 295.11(6)(a)2., Stats., or “areas where grading or regrading is necessary” as defined in s. 295.11(6)(a)5., Stats.

The language in s. NR 135.03(16)(a)6. was drafted to provide clarity to mine operators of what areas were subject to reclamation permit requirements. It is important that areas used to support reclamation as specified in a reclamation permit or an approved reclamation plan be included in the definition of a mining site and thus subject to permit requirements. In addition, such areas would also be subject to financial assurance obligations to assure that the regulatory authority would be able to carry out the reclamation plan in case of operator default. They would also be subject to fees to fund administration of the reclamation program.

Clearinghouse Comment:

What is the statutory authority for including in s. NR 135.03(16)(b)2. the phrase “and contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads”? Such language does not appear in the corresponding definition in s. 295.11(6)(b), Stats.

Department Response:

The questioned language clarifies what areas are not part of a “nonmetallic mining site” subject to reclamation. The Department also believes that the language clarifies what are “storage or processing areas . . . in or contiguous to areas excavated for nonmetallic mining, which s. 295.11(6)(a)1., Stats includes in the definition of a nonmetallic mining site. The additional language clarifies what is **not** contiguous to the above areas, and therefore not part of the mine site subject to reclamation.

The rule language reflects the consensus product of a work group whose sole mission was to clarify the sensitive issues involved in how one defines the nonmetallic mining site and what is not the nonmetallic mining site. There was a large concern on the part of operators who had mined an area over a historical period and that storage of product in a given area which was not contiguous to the mining site would not cause them to reclaim those areas. The operators’ concern is heightened when a road connects an existing operation with an “abandoned” area disturbed only before reclamation permit requirements would become effective, especially if a portion of such area is being used for the storage of product.

Clearinghouse Comment:

The duration of the permit under s. NR 135.27 is the period of the mine's operation and reclamation. Section 295.12 (3) (d), Stats., provides that the rules must contain "a requirement for a permit term equal to the period during which nonmetallic mining is conducted." Does the rule reflect the statutory requirement?

Department Response:

The Department believes that including reclamation after mining has ended within the term of the reclamation permit is authorized in s. 295.12(3)(d), Stats., which mandates the reclamation program rules include a "requirement for the operator to obtain a nonmetallic mining reclamation permit in order to engage in nonmetallic mining or **nonmetallic mining reclamation . . .**" [emphasis added].

In addition, the program rules under s. 295.12(3)(h), Stats. must include "Provisions . . . to ensure compliance with nonmetallic mining reclamation standards, [and] nonmetallic mining reclamation plans". The reclamation standards, under s. 295.12(2)(a), Stats. shall be "applicable to activities related to nonmetallic mining reclamation both during nonmetallic mining and **after the termination of nonmetallic mining**" [emphasis added].

Finally, s. 295.12(3)(g) requires that an . . ."operator . . . provide a bond, deposit of funds, established escrow account [etc.] . . . conditioned on the faithful performance of all the requirements of rules promulgated under this section". The financial assurance provided by the operator is, in turn, based upon the approved reclamation plan and the completion of such activities, to the satisfaction of the regulatory authority, is required in order for the operator's financial assurance to be released. The duration of the commitment spelled out in the reclamation plan is indefinite since the regulatory authority must make a determination as to when it is acceptable to release the financial assurance or whether additional work is required to return the site to stable condition.

The Department believes these statutory provisions clearly contemplate and authorize a reclamation permit carrying out a reclamation plan according to established standards that covers reclamation after mineral extraction has ended at a mine site. Thus, we believe there is statutory authority for s. NR 135.27 to provide that the reclamation permit should last through mining and reclamation of a nonmetallic mining site.

2. *Form, Style and Placement in Administrative Code*

The Clearinghouse Report recommended a number of corrections in style, form and placement. These have been incorporated in the final draft of proposed NR 135, **except** as described below.

Clearinghouse Comment:

The defined term "landowner" should be used in lieu of "persons or organizations who are operators or lessors of the property" in s. NR 135.18(3)(c).

Department Response:

It is true that the term "landowner" is defined in s. NR 135.03(9). However, this could mean either an owner or lessee of land. The language in s. NR 135.18(3)(c), developed on a recommendation of the rule advisory committee is intended to require an application list both the property owner **and** any lessor. The rule has been revised to clarify that all such parties must be identified as part of the reclamation permit application required under s. NR 135.18(3).

3. Adequacy of References to Related Statutes, Rules and Forms

The Clearinghouse Report contained recommended a number of corrections on references to related statutes and rules. These suggestions have been incorporated by the Department in the final draft of proposed NR 135 except where noted below.

Clearinghouse Comment:

The cross-references in ss. NR 135.05 (1) and 135.16 merely restate the exceptions in the rule and are superfluous.

Department Response:

The Department disagrees. It believes the referred to language, which clarifies which sites are exempt from or must comply with the reclamation permit and other requirements in NR 135, add clarity for mine operators and regulators.

Clearinghouse Comment:

Section NR 135.08 (2) provides an over-simplified statement of the regulatory effect of the groundwater law.

Department Response:

The Department disagrees. The language in s. NR 135.08(2) requiring reclamation be conducted so that ground water standards in ch. NR 140, Wis. Adm. Code are not exceeded, is consistent with the Department's obligations under s. 160.19(1), Stats. that rules it promulgates meet such standards.

4. *Clarity, Grammar, Punctuation and Use of Plain Language*

The Clearinghouse Report included a number of suggested changes to improve these attributes of the rule. In most cases, the Department chose not to make the suggested changes because it believes the proposed rule language was required by subch. I of Ch. 295, Stats., provided needed clarity, or reflected consensus language developed in close consultation with its advisory group.

SMALL BUSINESS ANALYSIS

A. 1. DESCRIBE COMPLIANCE AND/OR REPORTING REQUIREMENTS IMPOSED ON SMALL BUSINESS.

The new law and this rule do impose compliance and reporting requirements upon small business. There will be little or no difference in the compliance and reporting requirements imposed on small mine operators versus large mine operators. The rule will require that all operators submit a reclamation plan for approval by the regulatory authority. Existing operations will need to be conducted in a manner to facilitate final reclamation of the site. Also, mining must be conducted in a manner so as to not cause environmental impacts during or after mining. The need to obtain some form of financial assurance to guarantee performance of the reclamation activities detailed in their reclamation plan will be imposed on small operators and may prove more problematic than for larger operators.

The amount of fees will be partially dependent upon the size of the mining operation. All operations will need to pay fees on an annual basis and these fees will be based, in part, on the acreage affected and unreclaimed attendant to the current operation. To ensure that the regulatory authority obtains this and other information, the operator will be required to submit a report to the regulatory authority on an annual basis. The reporting requirements may be reported on forms provided by the department and will entail mine location, information about the mine, permit number and date that the permit was received, acreage currently affected by the mining operation, amount of acreage that has been reclaimed to date, a plan or map depicting the current operation and a self-certification that the operation is in compliance.

2. CAN THESE COMPLIANCE AND/OR REPORTING REQUIREMENTS BE MADE LESS STRINGENT FOR SMALL BUSINESS?

The requirements have been designed with the direct participation of the TAC and Council which includes mine operators including an operator of a relatively small operation with the intention of presenting the as minimum regulatory burden as possible. Thus, there is no ability to further reduce the burden. There is no provision in the law allowing different or less stringent reclamation requirements for small mines.

B. 1. DESCRIBE THE SCHEDULES OR DEADLINES FOR COMPLIANCE OR REPORTING IMPOSED ON SMALL BUSINESS.

All mining operations will have to have a permit. An "automatic permit" will be granted to existing mines during the initial 3 year period. An automatic permit may be obtained by filling out a short form, paying fees and making arrangements (if necessary) to provide supplemental information on the reclamation plan and the financial assurance to the regulatory authority.

Eight months after the effective date of NR 135 all operators who wish to continue operating an existing mine must submit an application for an "automatic permit." All operations must, at that time, be in compliance with the state-wide reclamation standards contained in NR 135.

There will be an annual reporting requirement. All operators must report activity from the previous calendar year, to the regulatory authority, by March 31. Fees must be paid by the end of the calendar year for the next year of operation.

2. CAN THESE SCHEDULES OR DEADLINES BE MADE LESS STRINGENT FOR BUSINESS?

The department, designed the both the compliance and reporting requirements in NR 135 to accomplish the minimum required by law with the least burden on operators. There is no difference in the requirements imposed on large versus small operators nor are there any statutory provisions allowing for differing requirements.

C. CAN THE COMPLIANCE OR REPORTING REQUIREMENTS FOR SMALL BUSINESS BE CONSOLIDATED OR SIMPLIFIED?

There is no realistic way to simplify the very abbreviated and minimal compliance and reporting requirements that are imposed on small operators. However, the rule includes a creative approach in which, at the discretion of the regulatory authority, the regulatory authority may fill out the report for small operators during inspections.

D. CAN PERFORMANCE STANDARDS BE ESTABLISHED FOR SMALL BUSINESS IN LIEU OF DESIGN OR OPERATIONAL STANDARDS?

The rule has incorporated performance standards over design or operational standards in nearly all instances. The opportunity to employ a creative and cost effective solutions has been written into the rule whenever possible.

E. CAN SMALL BUSINESS BE EXEMPTED FROM ANY OR ALL OF THE REQUIREMENTS OF THE RULE?

No, the statute provides that there are certain minimum requirements that must be complied with in order to safeguard the waters of the state, to prevent erosion and to ensure that the mining site will be reclaimed so as to result in a beneficial post-mining land use. This rule does not apply to sites of less than one acre.

F. INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. DESCRIBE THE TYPE OF BUSINESS THAT WILL BE AFFECTED BY THE RULE.

The typical business will be a nonmetallic mining operation. The size of the operation, number of employees and the annual sales will vary considerably. For the purposes of this discussion the focus will be on smaller operators. A smaller operator will meet the criteria of fewer than 25 employees and annual sales of less than \$2,500,000.

2. BRIEFLY EXPLAIN THE REPORTING, BOOKKEEPING, AND OTHER PROCEDURES REQUIRED FOR COMPLIANCE WITH THE RULE.

The additional recordkeeping that would need to be done as a result of this rule is expected to be minimal. The main need would be to document the number of acres that are currently unreclaimed as part of on-going mining operations. This would be done once a year on a simple form.

The biggest workload and burden on operators will be the preparation of the application to receive a mining permit from the regulatory authority under whom's jurisdiction the mine falls. This will generally be a one time work effort. The exception to this is would be when there is a significant modification or expansion of an existing operation. The amount of work needed to prepare the application and to come into compliance with the rule and the county or municipal reclamation ordinance will vary depending on the nature of the operation and site specific environmental and permitting variables.

3. DESCRIBE THE TYPE OF PROFESSIONAL SKILLS NECESSARY FOR COMPLIANCE WITH THE RULE.

The present skills of mine operators are those necessary to conduct mining operations in a manner that allows successful final reclamation of the site. These skills are planning and the ability to operate heavy equipment, do earthwork and move large amounts of materials according to a plan.

The skills needed to perform reclamation, including stabilization that must occur during the active operation are varied however, a large part of the activity is earthmoving and grading which are very close to the skills needed to run the mining operation.

Some seeding and erosion control and sit stabilization work would be quite straight-forward for those who have done landscaping work, been employed in agriculture or even planted their own domestic lawns or gardens.

However, depending on the complexity of the reclamation plan, final reclamation may prove to require the assistance of someone with specialized knowledge and experience. Even so, the rule is designed so that the degree of complexity of the reclamation follows directly from the post-mining land use that is declared by the operator. The land use requires certain revegetation methods in order to end up with a stand of vegetation conducive to the post-mining land use. There will be considerable variation in the level of difficulty in reclamation, analysis and, in some cases, the kind of background information required, depending on the declared land use.

Expertise in geology, engineering, agronomy or environmental science (such as ecology) may be required for the preparation of some reclamation plans particularly those of a complex nature. Expertise in civil engineering or geology will be required to identify and delineate nonmetallic mineral deposits for registration. County and local governments administering the program will require employees with some knowledge of the above areas as well as a knowledge of county and local zoning regulatory programs.

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to create ch. NR 135, relating to SW-18-95 reclamation of nonmetallic mining sites, and to create ss. NR 340.05(3m) and NR 340.06(3)(l).

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 295.12, 295.20(4) and 227.11(2)(a), Stats.

Statutes Interpreted: ch. 295 subch. I, Stats.

This order proposes rules, specifically ch. NR 135, Wis. Adm. Code, which requires reclamation of nonmetallic mining sites in Wisconsin. The department has been directed to create the rule by s. 295.12(1), Stats. The proposed rules create uniform statewide reclamation standards pursuant to Ch. 295, subch. I, Stats., for locally-administered reclamation programs covering nonmetallic mining sites throughout Wisconsin. The proposed rules also create procedures and requirements for registration to preserve certain marketable nonmetallic mineral deposits, as required by s. 295.20(4), Stats. This order also proposes a change in the reclamation standards for nonmetallic mines in or adjacent to navigable waters regulated under ch. NR 340, to assure that such reclamation is consistent with the standards proposed in NR 135.

1993 Act 464 created legislation directing the department to draft rules establishing a statewide nonmetallic mining reclamation program to be implemented at the local level. The Department proposed such rules under Natural Resources Board Order No. SW-18-95, and held hearings on them in April and May, 1995. As a result of these hearings, the department decided to seek advice on improving the enabling legislation. Following extensive consultation with industry, government and interested parties, these legislative changes were included in the 1996-97 Budget Bill, 1997 Act 27.

An advisory committee appointed by the Secretary has advised the Department during drafting of this rule. The department has met with these advisors numerous times since August, 1994. The advisory group has included representatives of the following organizations: Wisconsin Transportation Builders Association, Wisconsin Manufacturers and Commerce, Aggregate Producers of Wisconsin, Wisconsin Towns Association, Wisconsin Counties Association, University of Wisconsin Extension, Wisconsin County Code Administrators, Wisconsin Department of Transportation, American Society of Surface Mine Reclamation, Wisconsin County Highway Association, an environmental group called FOCUS, the Sierra Club, Wisconsin's Environmental Decade, and the Wisconsin Geologic and Natural History Survey. The Wisconsin Nonmetallic Mining Council appointed by Governor Thompson also advised the Department on the proposed rule and its enabling legislation until it was ended by 1997 Act 27.

Following rule revisions pursuant to Act 27, public hearings on proposed Ch. NR 135 were held in May 1998. In September 1998 the Natural Resources Board considered final approval of the rule but tabled it in order to resolve an issue raised by the Wisconsin Transportation Builders on expediting permitting for mining related to local transportation projects. The agreed-on solution required additional legislation, which was included in 1999 Act 9, which became effective in November 1999. On December 8, 1999, the Natural Resources Board approved the rules as amended by Act 9, with the provision that it become effective December 1, 2000, as requested by

the Wisconsin County Code Administrators.

However, when the approved rule was reported to the legislature in early February, 2000, it was discovered that the rule had been withdrawn on December 31, 1999 by operation of s. 227.14(6)(c), Stats. In February, 2000 the Board authorized repromulgating the proposed rule, unchanged from what it approved in December 1999, and a hearing was held on March 13, 2000. The Legislative Council's Rules Clearinghouse also submitted a report on the repromulgated rule pursuant to s. 227.15, Stats. Some revisions were made as a result of Clearinghouse comments.

The proposed rule establishes a statewide system of county and locally administered reclamation programs for nonmetallic mines, to be funded by fees on active nonmetallic mines. The statute requires the Department to write these rules, to assist in establishing county and municipal reclamation programs, and provide oversight to assure these programs meet state standards. The key requirement is nonmetallic mines be reclaimed to a beneficial post-mining land use after active mining ends.

The proposed NR 135 includes 6 subchapters. Subchapter I gives the purpose and scope of the rule, applicability, and definitions. Subchapter II establishes statewide standards to ensure that successful reclamation of all nonmetallic mining sites is achieved. Subchapter III establishes a framework for issuing reclamation permits for all nonmetallic mining sites that are active on or after 8 months following the effective date of NR 135. Subchapter IV details the responsibilities of regulatory authorities who administer nonmetallic mining reclamation programs. Subchapter V details oversight and assistance responsibilities of the department. Subchapter VI establishes requirements and procedures for registering marketable nonmetallic mineral deposits to preserve these resources for future mining.

SECTION 1. Chapter NR 135 is created to read:

**Department of Natural Resources
Chapter NR 135**

NONMETALLIC MINING RECLAMATION

TABLE OF CONTENTS

Subchapter I - General Provisions	NR 135.11	Topsoil Redistribution for Reclamation
NR 135.01 Purpose and Scope	NR 135.12	Revegetation and Site Stabilization
NR 135.02 Applicability		
NR 135.03 Definitions	NR 135.13	Assessing Completion of Successful Reclamation
Subchapter II - Standards (p. 9)	NR 135.14	Intermittent Mining
	NR 135.15	Maintenance
NR 135.05 Applicability of Standards		
NR 135.06 General Standards	Subchapter III - Permitting (p. 14)	
NR 135.07 Surface Water and Wetlands Protection	NR 135.16	Reclamation Permit Required
NR 135.08 Groundwater Protection	NR 135.17	Regulatory Authority To Issue Reclamation Permits
NR 135.09 Topsoil Management		
NR 135.10 Final Grading and Slopes		

NR 135.18	Reclamation Permit Application		Subchapter V - Department Oversight and Assistance (p. 44)
NR 135.19	Reclamation Plan		
NR 135.20	Public Notice and Right of Hearing	NR 135.44	Department Review of Pre-Existing Ordinances
NR 135.21	Reclamation Permit	NR 135.45	Department Review of New Ordinances
NR 135.22	Denial of Application for Reclamation Permit	NR 135.46	Amendment of
NR 135.23	Automatic Permit and Expedited Permit Review	NR 135.47	Department Audits
NR 135.24	Permit Modification	NR 135.48	Noncompliance Hearing
NR 135.25	Permit Suspension and Revocation	NR 135.49	Municipal Noncompliance, Consequences
NR 135.26	Approval of Alternate Requirements	NR 135.50	County Noncompliance, Consequences
NR 135.27	Permit Duration)	NR 135.51	Nonmetallic Mining Advisory Committee
NR 135.28	Permit Transfer	NR 135.52	Department Assistance
NR 135.29	Change of Regulatory Authority		
NR 135.30	Review of Permit Decision		Subchapter VI - Registration of Marketable Nonmetallic Mineral Deposits

Subchapter IV - Administration and Enforcement (p. 30)

		NR 135.53	Definitions
		NR 135.54	Marketable Nonmetallic Mineral Deposit
NR 135.32	Regulatory Authorities for Administration of a Nonmetallic Mining Reclamation Program	NR 135.55	Who May Register a Marketable Nonmetallic Mineral Deposits
NR 135.35	Model Nonmetallic Mining Reclamation Ordinances	NR 135.56	Registration Requirements
NR 135.36	Operator Reporting Requirements	NR 135.57	Registration of Contiguous Parcels
NR 135.37	Regulatory Authority's Annual Report to the Department	NR 135.58	Objection to Registration by a Zoning Authority
NR 135.38	Operator Reporting of Completed Reclamation	NR 135.59	Duration and Renewal of Registration
NR 135.39	Fees	NR 135.60	Previously Registered Deposits
NR 135.40	Financial Assurance	NR 135.61	Termination of Registration of a Depleted Deposit
NR 135.41	Interim Reclamation Waiver	NR 135.62	Relationship to Planning and Zoning
NR 135.42	Regulatory Authority Right of Inspection	NR 135.63	Right of Eminent Domain
NR 135.43	Enforcement, Orders, Penalties	NR 135.64	Exceptions

SUBCHAPTER I - GENERAL PROVISIONS

NR 135.01 PURPOSE AND SCOPE. (1) PURPOSE. The purpose of this chapter is to require reclamation of nonmetallic mining sites. The rule is promulgated pursuant to ch. 295, subch. I, Stats. The goals of reclamation are:

- (a) To rehabilitate sites where nonmetallic mining takes place after the effective date of an

applicable reclamation ordinance, in order to promote the removal or reuse of nonmetallic mining refuse, removal of roads no longer in use, grading of the nonmetallic mining site, replacement of topsoil, stabilization of soil conditions, establishment of vegetative cover, control of surface water flow and groundwater withdrawal, prevention of environmental pollution, development and reclamation of existing nonmetallic mining sites, and development and restoration of plant, fish and wildlife habitat if needed to comply with an approved reclamation plan.

(b) To assure nonmetallic mining operations after the effective date of an applicable reclamation ordinance are conducted in a manner that promotes successful reclamation consistent with the standards established in this chapter, minimizes the cost of nonmetallic mining reclamation, encourages the development and reclamation of existing nonmetallic mining sites and, to the extent practicable, minimizes areas disturbed by nonmetallic mining at any time and provides for contemporaneous nonmetallic mining reclamation.

(2) SCOPE. To accomplish these goals, this chapter establishes standards for reclaiming nonmetallic sites, sets out nonmetallic mining reclamation permit requirements, defines procedures and requirements applicable to mines subject to this chapter, defines procedures for administering nonmetallic mining reclamation programs, including the exercise of the department's authority for inspection, review and enforcement, and establishes a procedure for landowners to register marketable nonmetallic mineral deposits in order to preserve these resources.

NR 135.02 APPLICABILITY. This chapter applies to nonmetallic mining sites as follows:

(1) INITIAL APPLICABILITY. This chapter applies to all nonmetallic mining sites operating on or commencing to operate after 8 months following the effective date of this chapter . . . [revisor inserts date], except as exempted in sub. (3). This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before 8 months following the effective date of this chapter . . . [revisor inserts date].

(2) PUBLIC NONMETALLIC MINING. Except as exempted in sub. (3), this chapter applies to nonmetallic mining conducted by or on behalf of the state of Wisconsin, by or on behalf of a municipality, or for the benefit or use of the state or any state agency, board, commission or department, except that the financial assurance requirements of s. NR 135.40 do not apply to nonmetallic mining conducted by the state, a state agency, board, commission or department, or a municipality.

(3) EXEMPT ACTIVITIES. Except as provided in sub. (4), this chapter does not apply to any of the following activities:

(a) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the department under s. 30.19, 30.195 or 30.20, Stats., and complies with ch. NR 340.

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

(c) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

(d) Excavations or grading conducted for the construction, reconstruction, maintenance or

repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.

(e) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(f) Excavations for building construction purposes conducted on the building site.

(g) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total over the life of the mine.

(h) Any mining operation, the reclamation of which is required in a permit obtained under ch. 293, Stats.

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

(j) 1. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the department of transportation concerning the restoration of the nonmetallic mining site.

Note: The requirements of the department of transportation concerning the restoration of nonmetallic mining sites, other than commercial sources, are found in sections 104.9 and 208 of the standard specifications.

2. The exemption provided in this paragraph only applies to a nonmetallic mining operation with limited purpose and duration where the department of transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the department of transportation contract for construction of a specific transportation project.

3. If a nonmetallic mining site covered under subs. 1. and 2. is used to concurrently supply materials for projects unrelated to the department of transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under department of transportation contract and supervision.

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

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

(4) APPLICABILITY OF RECLAMATION STANDARDS. Notwithstanding sub. (3) (a) and (b), the reclamation standards in subch. II shall apply to the following:

(a) Nonmetallic mining at a site or a portion of a site that is subject to permit and reclamation requirements of the department under s. 30.19, 30.195 or 30.20, Stats., and complies with ch. NR 340.

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

Note: The permit procedures and requirements of this chapter other than reclamation standards in subch. II would not apply to activities described in this subsection, as they are already regulated by other permits or approvals. However, subch. II reclamation standards would apply to them.

NR 135.03 DEFINITIONS. In this chapter and in s. 91.75(9) and ch. 295, subch. I, Stats.:

(1) "Alternative requirement" means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the regulatory authority pursuant to s. NR 135.26.

(2) "Applicable reclamation ordinance" means a nonmetallic mining reclamation ordinance that applies to a particular nonmetallic mining site and complies with the requirements of this chapter and subch. I of ch. 295, Stats., unless the department is the regulatory authority as defined in sub. (20) (c). If the department is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of this chapter.

(2m) "Borrow site" means an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.

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

(4) "Department" means the department of natural resources.

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

(7) "Existing mine" means a nonmetallic mine where nonmetallic mining takes place after 8 months following the effective date of this chapter . . . [revisor inserts date].

(8) "Financial assurance" means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in s. NR 135.40 and is sufficient to pay for reclamation activities required by this chapter.

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

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

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

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

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

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

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

(15) "Nonmetallic mining refuse" means waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining.

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

(a) Nonmetallic mining sites means the following:

1. The location where nonmetallic mining is proposed or conducted.
2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
3. Areas where nonmetallic mining refuse is deposited.
4. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
5. Areas where grading or regrading is necessary.
6. Areas where nonmetallic mining reclamation activities are carried out or structures needed

for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.

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

1. Those portions of sites listed in par. (a) not used for nonmetallic mining or purposes related to nonmetallic mining after 8 months following the effective date of this chapter . . . [revisor inserts date].

2. Separate, previously mined areas that are not used for nonmetallic mineral extraction after 8 months following the effective date of this chapter . . . [revisor inserts date] 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 8 months following the effective date of this chapter . . . [revisor inserts date] for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.

(17) "Operator" means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

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

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

(20) "Regulatory authority" means the following:

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

(b) The county in which the nonmetallic mining site is located, if no reclamation municipal ordinance exists pursuant to par. (a), provided the county has an applicable reclamation ordinance, or

(c) The department, but only if there is no applicable reclamation ordinance enacted by the municipality or the county in which the nonmetallic mining site is located.

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

(22) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return

flows or industrial discharges which are point sources subject to permits under ch. 283, Stats., or source material, special nuclear material or by-product material, as defined in s. 254.31 (1), Stats.

(23) "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.

(24) "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.

(25) (a) "Unreclaimed acre" or "unreclaimed acres" means those unreclaimed areas in which nonmetallic mining has occurred after 8 months following the effective date of this chapter . . . [revisor inserts date] and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under s. NR 135.40(7). However the term does not include any areas described in par. (b).

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

1. Those areas where reclamation has been completed and certified as reclaimed under s. NR 135.40(7).

2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after 8 months following the effective date of this chapter . . . [revisor inserts date].

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

4. Areas previously mined but used after 8 months following the effective date of this chapter . . . [revisor inserts date] for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.

5. For purposes of fees under s. NR 135.39, those areas within a nonmetallic mining site which the regulatory authority has determined to have been successfully reclaimed on an interim basis in accordance with s. NR 135.41.

SUBCHAPTER II - STANDARDS

NR 135.05 APPLICABILITY OF STANDARDS. The standards of this subchapter apply as follows:

(1) The standards of this subchapter do not apply to any portion of a nonmetallic mining site that meets the criteria in ss. NR 135.02(3) and 135.03(16)(b), except as provided in s. NR 135.03(4).

(2) The standards of this subchapter apply to nonmetallic mining that occurs beginning 9 months following the effective date of this chapter . . . [revisor inserts date], including those lands previously affected by nonmetallic mining on which nonmetallic mining occurs after this date,

except as provided in sub. (1).

NR 135.06 GENERAL STANDARDS. (1) REFUSE AND OTHER SOLID WASTES.

Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the department adopted pursuant to chs. 289 and 291, Stats.

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

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

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

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

Note: Other applicable environmental, zoning or land use regulations may include chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 340, 500-590, and 812, chs. 30 and 91, 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 nonmetallic mining project.

NR 135.07 SURFACE WATER AND WETLANDS PROTECTION. Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with water quality standards for surface waters and wetlands contained in chs. NR 102 through NR 105. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to an applicable reclamation ordinance. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

NR 135.08 GROUNDWATER PROTECTION. (1) GROUNDWATER QUANTITY. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that 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.** Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in ch. NR 140 to be exceeded at a point of standards application.

NR 135.09 TOPSOIL MANAGEMENT. (1) **REMOVAL.** Topsoil and topsoil substitute material shall be removed, protected and redistributed to support reclamation and site stabilization. Topsoil shall be managed as specified in the reclamation plan in order to achieve reclamation to the approved post-mining land use. Topsoil and topsoil substitute material removal shall be performed, as required by the reclamation plan, prior to any mining activity associated with any specific phase of the mining operation.

(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.

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. Topsoil or topsoil substitute material shall be removed from areas to be affected by mining operations to the depth indicated in the reclamation plan or as determined in the field by a soil scientist, project engineer or other qualified professional.

(3) **STORAGE.** Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan, 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.

NR 135.10 FINAL GRADING AND SLOPES. (1) All areas affected by mining shall be graded in accordance with the approved reclamation plan to achieve a stable and safe condition consistent with the post mining land use. The reclamation plan may designate areas such as stable slopes and rock faces which do not require final grading.

(2) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless alternative requirements are approved under s. NR 135.26, and stable slopes can be demonstrated based on site-specific engineering analysis. The engineering analysis shall show that a minimum acceptable slope stability factor is attainable at a steeper slope and that the post-mining land use specified in the reclamation plan is not adversely affected. When the slope occurs at the edge of a body of water, this approved slope shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

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

NR 135.11 TOPSOIL REDISTRIBUTION FOR RECLAMATION. Topsoil or topsoil substitute material shall be redistributed in accordance with the approved reclamation plan 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.

NR 135.12 REVEGETATION AND SITE STABILIZATION. Except for permanent roads or similar surfaces identified in the reclamation plan, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.

NR 135.13 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. 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 regulatory authority or its agent;
- (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.

NR 135.14 INTERMITTENT MINING. Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to s. NR 135.40 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.

NR 135.15 MAINTENANCE. During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall

perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan.

SUBCHAPTER III - PERMITTING

NR 135.16 RECLAMATION PERMIT REQUIRED. After 9 months following the effective date of this chapter . . . [revisor inserts date] any operator who conducts nonmetallic mining shall obtain a nonmetallic mining reclamation permit pursuant to the applicable reclamation ordinance and this chapter, unless the activity is specifically exempted in ss. NR 135.02 (1), 135.02 (3) or 135.03(16)(b). No person may engage in nonmetallic mining or in nonmetallic mining reclamation after 9 months following the effective date of this chapter . . . [revisor inserts date] without obtaining a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance and this chapter unless so exempted.

NR 135.17 REGULATORY AUTHORITY TO ISSUE RECLAMATION PERMITS. (1) COUNTIES REQUIRED TO ISSUE PERMITS (a) Subject to subs. (2) and (3), nonmetallic mining reclamation permits can be issued or otherwise acted on pursuant to this subchapter only by a county that has adopted and administers a nonmetallic mining reclamation ordinance, as required by s. NR 135.32.

(b) If the department finds pursuant to sub. (3)(b) that a municipal regulatory authority's program is not in compliance with this chapter, the county in which the municipality is located shall issue or otherwise act on permits pursuant to this subchapter.

(2) MUNICIPALITIES PERMITTED TO ISSUE PERMITS. (a) A municipality may issue or otherwise act on nonmetallic mining reclamation permits pursuant to this subchapter if it has adopted and administers a nonmetallic mining reclamation ordinance pursuant to this chapter. Nonmetallic mining subject to regulation by these municipal regulatory authorities are not subject to county or department permitting pursuant to this subchapter.

(b) If the department finds under par. (3)(b) that a county's program is not in compliance with this chapter, any municipality within the county that has enacted an applicable reclamation ordinance by the time of this finding may continue to issue and otherwise act on permits pursuant to this subchapter.

(3) DEPARTMENT TO ISSUE PERMITS IN CERTAIN CONDITIONS. The department shall issue or otherwise act on nonmetallic mining reclamation permits pursuant to this subchapter under either of the following conditions:

(a) Neither the county nor the municipality in which the nonmetallic mining site is located has enacted an applicable reclamation ordinance pursuant to this chapter.

(b) The department finds, after a hearing under subch. V, that a regulatory authority's nonmetallic mining reclamation program does not comply with this chapter, except as follows:

1. If the department finds a municipal regulatory authority's program is not in compliance with this chapter, the county in which the municipality is located shall issue or otherwise act on permits pursuant to this subchapter if the county has enacted an applicable reclamation ordinance.

2. If the department finds a county's program is not in compliance with this chapter, any municipality within the county that has enacted an applicable reclamation ordinance by the time of this finding shall continue to issue and otherwise act on permits pursuant to this subchapter.

NR 135.18 RECLAMATION PERMIT APPLICATION. (1) **EXISTING MINES.** Operators of existing nonmetallic mines shall apply for a nonmetallic mining reclamation permit by submitting no later than 8 months after the effective date of this chapter . . . [revisor insert date] all of the following:

(a) The information required by sub. (3).

(b) The first year's annual fee, as required by s. NR 135.39.

(c) A certification signed by the operator that he or she will provide the regulatory authority with a complete reclamation plan required by s. NR 135.19 and financial assurance required by s. NR 135.40 to the regulatory authority no later than the time established by the regulatory authority pursuant to its applicable reclamation ordinance, which shall be between one and 3 years after submittal of the application required in sub. (3).

(2) **NEW AND REOPENED MINES.** (a) The operator of any nonmetallic mine not covered by sub. (1) shall apply for and obtain a reclamation permit application before beginning mining operations.

(b) The operator shall submit the following when making an application in accordance with this subsection:

1. The information required by sub. (3).

2. The first year's annual fee, as required by s. NR 135.39.

3. A reclamation plan conforming to s. NR 135.19.

4. A certification that the operator will provide, as a condition of the reclamation permit, financial assurance as required by s. NR 135.40 upon granting of the reclamation permit and before mining begins.

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

(3) **APPLICATION CONTENTS.** All applications for reclamation permits under this chapter shall include all of the following:

(a) A brief description of the general location and nature of the nonmetallic mine.

(b) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.

(c) The names, addresses and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.

(d) The name, address and telephone number of the person or organization who is the operator.

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

NR 135.19 – RECLAMATION PLAN. (1) PLAN REQUIRED. An operator who conducts or plans to conduct nonmetallic mining following 8 months after the effective date of this chapter . . . [revisor inserts date] shall submit to the regulatory authority a reclamation plan that meets the requirements of this section and complies with the standards of subch. II. To avoid duplication, the reclamation plan may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

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

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

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.

(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 intervals specified by the regulatory authority.

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

(e) For existing mines, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.

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

(3) **POST-MINING LAND USE.** (a) The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with any applicable state, local or federal laws in effect at the time the plan is submitted.

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, 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.

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

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

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

(a) A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures.

(b) The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.

(c) A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.

(d) A plan or map which shows surface structures, roads and related facilities after the cessation of mining.

(e) The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.

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

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

(h) A plan and, if necessary, a narrative showing erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface and groundwater.

(i) A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver pursuant to s. NR 135.41 and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in subch. II and timing of interim and final reclamation.

Note: Some of the information required by this subsection may be combined; i.e. a single map may show anticipated post-mining topography required by par. (c) as well as structures and roads as required by par. (d).

(5) The reclamation plan shall contain criteria for assuring successful reclamation in

accordance with s. NR 135.13.

(6) **CERTIFICATION OF RECLAMATION PLAN.** (a) The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. The landowner and lessee, if different from the operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation, except as provided in par. (b).

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

1. The mine operator has submitted a reclamation plan for an existing mine in accordance with s. NR 135.18(1).

2. The operator has submitted a reclamation plan for a new or reopened mine in accordance with s. NR 135.18(2) which is located on land for which a lease agreement or memorandum of lease between the landowner and applicant was recorded prior to 8 months following the effective date of this chapter . . . [revisor inserts date].

(7) **APPROVAL.** The regulatory authority shall approve, approve conditionally or deny the reclamation plan in writing in accordance with s. NR 135.21(1)(f) for existing mines and s. NR 135.21(2) for new or reopened mines. Conditional approvals shall be issued according to s. NR 135.21(3), and denials of permit applications shall be made according to s. NR 135.22.

NR 135.20 PUBLIC NOTICE AND RIGHT OF HEARING. (1) **PUBLIC NOTICE.** (a) Except as provided in sub. (4) for existing mines, a regulatory authority that has received an application to issue a reclamation permit shall publish a public notice of the application no later than 30 days after receipt of a complete application or request.

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

(c) Unless the department is the regulatory authority, copies of the notice shall be forwarded by the regulatory authority to the county or applicable local zoning board, the county and applicable local planning organization, the county land conservation officer, and owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located. If the department is the regulatory authority, copies of the notice shall be forwarded to all counties and municipalities in which the site is located.

(2) **LOCAL HEARING.** Except as provided in sub. (4) for existing mines, a county or municipal regulatory authority shall provide for opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows.

(a) If there is a zoning-related hearing on the nonmetallic mine site, the regulatory authority

shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The regulatory authority shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.

(b) 1. If there is no opportunity for a zoning-related hearing on the nonmetallic mine site as described in par. (a), opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within 300 feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is located or proposed may request a public informational hearing. The regulatory authority shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under sub. (1). This public informational hearing shall be held no sooner than 30 days nor later than 60 days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility and effects of the proposed reclamation. Procedures for the public informational hearing shall be described in the applicable reclamation ordinance.

2. The subject matter and testimony at this informational hearing, if it is held separately from any zoning-related hearing where the opportunity exists for testimony on reclamation pursuant to par. (a), shall be limited to reclamation of the nonmetallic mine site.

(3) HEARING ON RECLAMATION PERMIT APPLICATIONS TO THE DEPARTMENT. (a) Except as provided in sub. (4) for existing mines, where the department is the regulatory authority, it shall provide an opportunity for public informational hearing on an application to issue a nonmetallic mining reclamation permit.

(b) Any person who resides within, owns property within or whose principal place of business is within 300 feet of the nonmetallic mining site may request a public informational hearing. The department shall hold a public hearing if requested by any of these persons within 30 days of the actual date of public notice under sub. (1), which shall be held no sooner than 30 days and no later than 60 days after being requested and shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility, effects and other relevant aspects of the proposed nonmetallic mining and reclamation. The informational hearing shall be conducted using the procedures for a noncontested case hearing pursuant to ch. NR 2.

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

(4) PUBLIC NOTICE AND HEARINGS FOR EXISTING MINES. (a) No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued pursuant to s. NR 135.21(1)(a) for any existing mine.

(b) If the regulatory authority accepts a previously approved reclamation plan for that mine in accordance with s. NR 135.21(1)(d), no public notice or informational hearing is required.

(c) If the regulatory authority requires the submittal of a new reclamation plan for that mine, public notice and the opportunity for public informational hearing shall be provided following the receipt of the reclamation plan in accordance with this section. In this case, subs. (1) to (3) apply; however, the subject matter and testimony at that hearing, if held, shall be limited to the new reclamation plan.

NR 135.21 RECLAMATION PERMIT ISSUANCE. (1) **EXISTING MINES.** (a) All existing nonmetallic mines where nonmetallic mining takes place after 8 months following the effective date of this chapter . . . [revisor insert date] and that have applied for a reclamation permit pursuant to s. NR 135.18(1) shall be granted the permit by the regulatory authority within 30 days of the application.

(b) Existing mines that are granted a reclamation permit pursuant to par. (a) shall, within a time established by the regulatory authority pursuant to its applicable reclamation ordinance that is between one and 3 years of receipt of the permit, submit to the regulatory authority the following:

1. A reclamation plan that meets the requirements s. NR 135.19; and
2. Financial assurance required pursuant to s. NR 135.40.

(c) The regulatory authority may grant a reasonable extension to the deadline for submitting the materials required in par. (b) when it finds extenuating circumstances exist.

(d) The regulatory authority shall accept, as satisfaction of the requirement in par. (b) 1., submittal of a previously-completed document that includes plans for reclamation so long as:

1. The document has been approved by a county or municipality; and
2. The regulatory authority finds that the document designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.

(e) If a regulatory authority determines that a document with reclamation plans previously approved meets some, but not all of, the requirements of this chapter, the regulatory authority shall request the supplemental information needed to satisfy the reclamation plan requirements of this section. In that case, the regulatory authority shall determine whether or not to provide public notice and opportunity for public hearing pursuant to s. NR 135.20(4)(c), depending on the nature and extent of the supplemental information.

(f) Within 30 days of receipt of the reclamation plan that meets the requirements of s. NR 135.19 and evidence of financial assurance required pursuant to s. NR 135.40, both as required by par. (b), the regulatory authority shall affirm in writing its decision whether to approve these submittals and continue the nonmetallic mining reclamation permit issued pursuant to par. (a). A reclamation permit with this written affirmation granting it shall satisfy the requirements of this chapter without further action, submittal or approval by the regulatory authority.

(2) **NEW AND REOPENED MINES.** Unless denied pursuant to s. NR 135.22, the regulatory authority shall approve in writing a request submitted pursuant to s. NR 135.18(2) to issue a nonmetallic mining reclamation permit for a nonmetallic mine where mining has not yet taken place after 8 months following the effective date of this chapter . . . [revisor inserts date] or an existing nonmetallic mine where mining is not taking place after 8 months following the effective date of this chapter . . . [revisor inserts date]. However, the regulatory authority may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of s. NR 135.19. The regulatory authority may issue a reclamation permit subject to conditions in sub. (3) if appropriate. The permit decision shall be made no sooner than 30 nor later than 90 days following receipt of the complete reclamation permit application and reclamation plan pursuant to this

subchapter, unless a public hearing is held pursuant to s. NR 135.20. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to sub. (3) if appropriate, or shall deny the permit as provided in s. NR 135.22, no later than 60 days after completing the public hearing.

(3) **CONDITIONS.** The regulatory authority may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this chapter. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to s. NR 135.40 prior to beginning mining.

(4) **COOPERATIVE ISSUANCE BY MULTIPLE AUTHORITIES.** If more than one regulatory authority has jurisdiction over a single nonmetallic mining site, the regulatory authorities shall cooperatively issue a single reclamation permit for the nonmetallic mining site. Any unresolvable issues may be referred to the department under s. NR 135.48.

NR 135.22 DENIAL OF APPLICATION FOR RECLAMATION PERMIT. (1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in s. NR 135.21, if the regulatory authority finds any of the following:

(a) The applicant has, after being given an opportunity to make corrections, failed to provide an adequate permit application, reclamation plan, financial assurance or any other submittal required by this chapter or the applicable reclamation ordinance to the regulatory authority.

(b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained in the applicable reclamation ordinance, this chapter or subch. I of ch. 295, Stats.

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

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

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

b. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter.

c. Forfeitures of financial assurance.

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

(2) A regulatory authority's decision to deny an application to issue a reclamation permit may be reviewed under s. NR 135.30.

NR 135.23 AUTOMATIC PERMITTING AND EXPEDITED PERMIT REVIEW. (1) AUTOMATIC PERMITTING OF BORROW SITES FOR LOCAL TRANSPORTATION PROJECTS.

(a) The regulatory authority shall automatically issue an expedited permit under this subsection if the borrow site:

1. Will be opened and reclaimed under contract with a municipality within a period not exceeding 36 months;
2. Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with a municipality;
3. Is regulated and will be reclaimed under contract with a municipality in accordance with the requirements of the department of transportation concerning the restoration of nonmetallic mining sites;
4. Is not a commercial source;
5. Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any, and;
6. Is not otherwise exempt from the requirements of this chapter under s. NR 135.02(3).

(b) The applicant shall notify the regulatory authority of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.

(c) The applicant shall provide evidence to the regulatory authority to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.

(d) The regulatory authority shall accept the contractual provisions incorporating requirements of the department of transportation in lieu of a reclamation plan under s. NR 135.19.

(e) The regulatory authority shall accept the contractual provisions in lieu of the financial assurance requirements in NR 135.40.

(f) The public notice and hearing provisions of s. NR 135.20 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.

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

(g) The annual fees under s. NR 135.39 shall apply, however, the regulatory authority may not charge a plan review fee or an expedited plan review fee. Notwithstanding s. NR 135.39(4)(b) and (c), the total annual fee including the department share shall not exceed the amount in Table 3 of s. NR 135.39.

(h) The regulatory authority shall issue the automatic permit within 7 days of the receipt of a complete application.

(i) If the borrow site is used to concurrently supply materials for other than the local

transportation project, the automatic permitting in this subsection still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with the department of transportation requirements.

(j). Notwithstanding s. NR 135.36, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.

(2) **EXPEDITED PERMITTING** (a) An applicant may request expedited permit review by proceeding in accordance with par. (b) or (c).

(b) An applicant may submit a request for expedited review with payment of the fee required under s. NR 135.39(4). This request shall state the need for expedited review and the date by which the expedited review is requested.

(c) An applicant may submit a request for an expedited review if the applicant requires a reclamation permit to perform services under contract with a municipality. This request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.

(d) Following receipt of a request under this subsection, the regulatory authority 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 pursuant to par. (b) shall be returned.

(e) The expedited review process may not waive the requirements of this subchapter for public notice and hearing. This section does not impose an obligation upon the regulatory authority to act upon a permit application under this section by a specific date.

NR 135.24 PERMIT MODIFICATION. (1) **BY THE REGULATORY AUTHORITY.** If a regulatory authority finds that, because of changing conditions, the nonmetallic mining site no longer is in compliance with this chapter or the applicable reclamation ordinance, it shall issue an order modifying the permit in accordance with s. NR 135.43. 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 this chapter or the applicable reclamation ordinance.

(2) **BY THE OPERATOR.** If an operator desires to modify a nonmetallic mining reclamation permit or reclamation plan, the operator shall submit an application to modify the permit or plan to the regulatory authority. The application shall be subject to the requirements of this subchapter. The regulatory authority that issued the permit shall take action on the application to modify it in accordance with the standards and procedures contained in this subchapter.

(3) **REVIEW.** All actions by the regulatory authority pursuant to this section may be reviewed under s. NR 135.30.

NR 135.25 PERMIT SUSPENSION AND REVOCATION. (1) **GROUND.** A regulatory authority may suspend or revoke a nonmetallic mining permit issued pursuant to this chapter if it finds that the operator has done any of the following:

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

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

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

(2) **SUSPENSION.** If the regulatory authority makes any of the findings in sub. (1), it may suspend a nonmetallic mining reclamation permit for up to 30 days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to s. NR 135.43.

(3) **REVOCATION.** If a regulatory authority makes any of the findings in sub. (1), it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to s. NR 135.40 to the regulatory authority. The regulatory authority may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

NR 135.26 APPROVAL OF ALTERNATE REQUIREMENTS. (1) **CRITERIA.** A regulatory authority may approve an alternate requirement to the reclamation standards established in this chapter if the operator demonstrates and the regulatory authority finds that all of the following criteria are met:

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

(b) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternate requirement is approved.

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

(2) **PROCEDURES.** (a) An operator who requests an alternate requirement shall submit the request in writing as required in the applicable reclamation ordinance.

(b) If the regulatory authority is a county or municipality, the alternate requirement shall be approved or disapproved as provided in the applicable reclamation ordinance. Approval or disapproval shall be in writing and shall contain documentation of the reasons why the alternate requirement was or was not approved.

(c) If the department is the regulatory authority, the request shall be submitted to the department's bureau of waste management, which shall have authority to approve these requests. Approval or disapproval shall be in writing and shall contain documentation of the reasons why the alternate requirement was or was not approved.

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

(e) An applicable reclamation ordinance may provide opportunity for public informational hearing pursuant to this subchapter prior to the regulatory authority's action on a request for an alternate requirement.

(3) DEPARTMENT REVIEW. (a) The regulatory authority shall submit written notice to the department at least 10 days prior to public hearing pursuant to sub. (2) (e) on the proposed alternate requirement.

(b) If the department determines that the proposed alternate requirement does not comply with the intent of this chapter or the applicable reclamation ordinance, the department may notify the regulatory of this determination either prior to or during the public hearing.

(c) The regulatory authority shall submit each written decision on an alternate requirement to the department within 10 days of issuance.

NR 135.27 PERMIT DURATION. A nonmetallic mining reclamation permit issued pursuant to this chapter shall last through the mine's operation and reclamation as described in the approved reclamation plan. If changes occur in the area to be mined, the nature of planned reclamation, or other aspects of mining require that the approved reclamation plan be amended, the operator shall apply for a permit modification pursuant to s. NR 135.24(2). If the mine operator is not the landowner, the permit duration cannot exceed the duration of the lease unless the lease is renewed or the permit is transferred to a subsequent lessee or the landowner pursuant to s. NR 135.28.

NR 135.28 PERMIT TRANSFER. (1) A nonmetallic mining permit may be transferred to a new operator upon submittal to the regulatory authority of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with.

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

NR 135.29 CHANGE OF REGULATORY AUTHORITY. If there is a change of regulatory authority for a nonmetallic mining site, the site's nonmetallic mining permit shall remain in effect and be enforceable until the permit is modified by the new regulatory authority.

NR 135.30 REVIEW OF PERMIT DECISION. (1) COUNTY OR MUNICIPAL PERMIT DECISION. Notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats., any person who meets the requirements of s. 227.42 (1), Stats., may obtain a contested case hearing under s. 68.11, Stats., on a county or municipal regulatory authority's decision to issue, deny or modify a nonmetallic mining reclamation permit.

(2) DEPARTMENT PERMIT DECISION. Any person who meets the requirements of s. 227.42(1), Stats., may seek review of a department decision to issue, deny or modify a nonmetallic mining reclamation permit, where the department administers a nonmetallic mining reclamation

program pursuant to s. NR 135.17(3). This hearing shall be held as a contested case hearing pursuant to ss. 227.42 and 227.43, Stats. The hearing shall be conducted within the county where the nonmetallic mining site is located. Decisions from these hearings are reviewable in court pursuant to ss. 227.52 to 227.59, Stats.

SUBCHAPTER IV - ADMINISTRATION AND ENFORCEMENT

NR 135.32 REGULATORY AUTHORITIES FOR ADMINISTRATION OF A NONMETALLIC MINING RECLAMATION PROGRAM. (1) COUNTIES REQUIRED TO ADMINISTER NONMETALLIC MINING RECLAMATION PROGRAMS. Each county shall enact and administer a nonmetallic reclamation ordinance that complies with this chapter, except as provided in subs. (2), (3) and (4). These ordinances shall become effective 6 months after the effective date of this chapter . . . [revisor inserts date], at which time counties shall administer them in conformance with this chapter.

(2) MUNICIPALITIES PERMITTED TO ADMINISTER A NONMETALLIC MINING RECLAMATION PROGRAM. A municipality may, beginning 6 months after the effective date of this chapter . . . [revisor inserts date] administer and enforce a nonmetallic mining reclamation program pursuant to this subchapter if it has adopted and administers a reclamation ordinance that complies with this chapter. Nonmetallic mining subject to municipal administration and enforcement is not subject to county or department administration and enforcement pursuant to this subchapter.

(3) DEPARTMENT TO ADMINISTER A NONMETALLIC MINING RECLAMATION PROGRAM UNDER CERTAIN CONDITIONS. The department shall administer and enforce a nonmetallic mining reclamation program pursuant to this subchapter only under either of the following conditions:

(a) The county in which a nonmetallic mining site is located has not enacted an applicable reclamation ordinance, and no applicable reclamation ordinance has been adopted by the municipality in which the site is located.

(b) The department finds, after a hearing pursuant to subch. V, that a county or municipality's nonmetallic mining reclamation program does not comply with this chapter, except as follows:

1. If the department finds a municipality's program does not comply with this chapter, the county in which the site is located shall administer and enforce a nonmetallic mining reclamation program if it enacts an applicable reclamation ordinance.

2. If the department finds a county's program does not comply with this chapter, any municipality that has enacted an applicable reclamation ordinance by the time of this finding may continue to administer and enforce its nonmetallic mining reclamation program.

(4) If all cities, villages and towns that contain nonmetallic mines in a county with a population of 700,000 or more administer and enforce a nonmetallic mining reclamation program pursuant to this chapter by the first day of the fourth month following the effective date of this chapter . . . [revisor inserts date], that county may elect not to adopt an applicable nonmetallic mining reclamation ordinance and not to administer and enforce a nonmetallic mining reclamation program.

NR 135.35 MODEL NONMETALLIC MINING RECLAMATION ORDINANCES. The department shall prepare and publish one or more model reclamation ordinances for counties and municipalities to use in complying with the requirements of this chapter.

NR 135.36 OPERATOR REPORTING REQUIREMENTS. (1) An operator shall submit an annual report for every nonmetallic mining site with a reclamation permit to the regulatory authority. The annual report shall include all of the following:

- (a) The name and mailing address of the operator.
- (b) The location of the nonmetallic mining site, including legal description, tax key number or parcel identification if available.
- (d) The identification number of the applicable nonmetallic mining permit, if assigned by the regulatory authority.
- (e) The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
- (f) The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.
- (g) A plan, map or diagram accurately showing the acreage described in pars. (e) and (f).
- (h) The following certification, signed by the operator:
"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining permit and Chapter NR 135, Wisconsin Administrative Code."

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

(3) Annual reports shall be submitted by an operator for all active and intermittent mining sites to the regulatory authority for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to s. NR 135.38 or at the time of release of financial assurance pursuant to s. NR 135.40 (7).

(4) A regulatory authority may, at its discretion, obtain the information required in sub. (1) for a calendar year by written documentation of its inspections of a nonmetallic mining site. If the regulatory authority obtains and documents the required information, the annual report need not be submitted by the operator. If the regulatory authority determines that the operator need not submit an annual report pursuant to this subsection, the regulatory authority shall advise the operator in writing at least 30 days before the end of the applicable calendar year. In that case, the regulatory authority shall require the operator to submit the certification required in sub. (1) (h).

(5) A regulatory authority shall retain annual reports required by sub. (1) or equivalent records as provided in sub. (4) for 10 years after they are submitted, and shall make them available upon request to the department for inspection or audit activities the department conducts pursuant to subch. V.

NR 135.37 REGULATORY AUTHORITY'S ANNUAL REPORT TO THE DEPARTMENT. Unless the department is the regulatory authority, the regulatory authority shall submit an annual program report to the department by May 31 for the previous calendar year. The regulatory authority's annual report shall include the following:

- (1) The total number of nonmetallic mining permits in effect.
- (2) The number of new permits issued within the jurisdiction of the regulatory authority.
- (3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.
- (4) The number of acres being mined.
- (5) The number of acres that have been reclaimed and have had financial assurance released pursuant to this subchapter.
- (6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this subchapter.
- (7) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.

NR 135.38 OPERATOR REPORTING OF COMPLETED RECLAMATION. An operator shall file a notice of completed reclamation with the regulatory authority when the operator deems reclamation activities to be completed for a portion of the nonmetallic mine site or for the entire site. The notice of completed reclamation shall be filed as provided by the applicable reclamation ordinance.

NR 135.39 FEES. (1) **AREAS SUBJECT TO FEES.** (a) Fees shall be assessed pursuant to this section for all unreclaimed acres of a nonmetallic mine site, as defined in s. NR 135.03(25), except the following:

1. Areas that are defined in s. NR 135.03(16)(b) as not subject to this chapter.
2. Areas that have been determined by the regulatory authority to qualify for fee waiver because of successful interim reclamation pursuant to s. NR 135.41.

(b) For new and reopened mines that obtain a reclamation permit under s. NR 135.18(2), the first year's annual fee shall be based upon the unreclaimed acres which are anticipated at the end of that calendar year. The regulatory authority may waive a portion of the first year's annual fee in Tables 1, 2 and 3 based on the number of months remaining in the year at the time of application.

(c) If reclamation has already occurred on portions of a nonmetallic mine site, the fees for such portions may be submitted with a request that they be held by the regulatory authority pending certification of completed reclamation pursuant to s. NR 135.40(7). Upon such

certification, the regulatory authority shall refund that portion of the annual fee applying to the reclaimed areas. If the regulatory authority fails to make a determination under s. NR 135.40(7)(c) within 60 days of the request, the regulatory authority shall refund that portion of the annual fee that applies to the reclaimed areas.

(2) COLLECTION. (a) The regulatory authority shall collect annual fees from the operator based on the unreclaimed acreage of each nonmetallic mining site described in sub. (1). Annual fees shall be collected for each subsequent calendar year.

(b) Fees shall be paid to the regulatory authority on or before December 31 for the subsequent year, unless otherwise specified by s. NR 135.18(1) or (2) or by the regulatory authority in the applicable reclamation ordinance. If the department is the regulatory authority, the annual fee from Table 2 paid in 2001 with the reclamation permit application shall cover both calendar years 2001 and 2002.

(c) The amount collected shall equal the department's share as described in sub. (3), the regulatory authority's share described in sub. (4) and if applicable the reclamation plan review fee described in sub. (5). The department's share of the annual fees described in sub. (3) shall be transferred to the department by March 31, for the previous year by the regulatory authority.

(3) DEPARTMENT SHARE. The department's statewide share of the annual fees collected pursuant to this section shall be equal to the department's statewide cost to inspect, enforce, consult with and audit the regulatory authority under this chapter, unless the department is the regulatory authority and collects a fee under sub. (4)(c). If the department is the regulatory authority, the fee in Table 1 may not be collected. The department's share of the annual fee under this subsection shall be assessed based on unreclaimed acreage as specified in Table 1.

Note: If the department is the regulatory authority, the fee in Table 1 may not be collected. The fees in Tables 2 and 3 and sub. (4)(c) include the department's statewide costs, as well as the department's estimated expenses as local regulatory authority.

TABLE 1: Department Share of Annual Fees Collected by County and Local Regulatory Authorities.

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

(4) REGULATORY AUTHORITY'S SHARE. (a) The fee under this subsection shall be collected as established in the regulatory authority's applicable reclamation ordinance.

(b) The regulatory authority's share of the annual fees shall as closely as possible equal its expenses to examine and approve nonmetallic mining reclamation plans and its costs of inspecting nonmetallic mining reclamation. These costs shall be limited as follows.

1. Fees collected by the regulatory authority under this section shall be used only for reasonable expenses associated with the administration of this chapter.

2. If a county or municipal regulatory authority's fees are greater than those established in par. (c), the county or municipality shall make available for public inspection written documentation of its estimated program costs and the need for fees exceeding those in par. (c) prior to adopting them.

(c) If the department is the regulatory authority, the department shall collect a fee based on unreclaimed acreage in Table 2 for fees due before the end of December 31, 2003 and Table 3 for fees due beginning January 1, 2004.

Note: The fees in Tables 2 and 3 include the department's statewide share that would have otherwise been collected in accordance with Table 1 in sub. (3).

**TABLE 2: Annual Fees Due On Or Before December 31, 2003
Where The Department is the Regulatory Authority**

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1 to 5 acres, does not include mines < 1 acre	\$ 450
6 to 10 acres	\$ 600
11 to 15 acres	\$ 750
16 to 25 acres	\$ 1000
26 to 50 acres	\$ 1100
51 acres or larger	\$ 1250

**TABLE 3: Annual Fees Due On or After January 1, 2004
Where The Department is the Regulatory Authority.**

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1 to 5 acres, does not include mines < 1 acre	\$ 150
6 to 10 acres	\$ 300
11 to 15 acres	\$ 450
16 to 25 acres	\$ 600
26 to 50 acres	\$ 700
51 acres or larger	\$ 750

(d) If the department collects a fee under this subsection, it may not collect a fee for its statewide costs under sub. (3).

(5) RECLAMATION PLAN REVIEW FEE. (a) The regulatory authority may establish a reclamation plan review fee in its applicable reclamation ordinance that may be collected in addition to any annual fee collected pursuant to subs. (3) and (4). This fee may not apply to nonmetallic mines that submit a reclamation plan pursuant to s. NR 135.18(1)(c).

(b) If the department is the regulatory authority, the reclamation plan review fee for reclamation plans submitted on or after January 1, 2004 shall be as in Table 4. This fee may not apply to nonmetallic mines that submit a reclamation plan pursuant to s. NR 135.18(1)(c).

**TABLE 4: Plan Review Fee For Reclamation Plans Submitted On or
After January 1, 2004 Where The Department Is The Regulatory Authority.**

Proposed Mine Site Size, Rounded to the Nearest Whole Acre	One-Time Plan Review Fee
1 to 25 acres	\$ 900
26 to 50 acres	\$ 1200
51 or more acres	\$ 1500

(d) The regulatory authority shall establish an expedited reclamation plan review fee in its applicable reclamation ordinance. If the department is the regulatory authority, the expedited plan review fee shall be \$500 in addition to the plan review fee pursuant to par. (b).

(e) The reclamation plan review fee and, if applicable, the expedited reclamation plan review fee shall be added to and collected as part of the annual fee established under this section.

(6) **REDUCTION OF ANNUAL FEES FOR CERTAIN MINES.** (a) A regulatory authority, as part of its applicable reclamation ordinance, may establish reduced annual fees for nonmetallic mines in which nonmetallic mining has not taken place in the previous calendar year.

(b) The department's share pursuant to sub. (3) of fees for nonmetallic mines in which no nonmetallic mining has taken place during a calendar year shall be \$15.

(c) If the department is the regulatory authority, its fee under sub. (4)(c) for mines in which mining has not taken place in the previous calendar year shall be \$100.

(7) Within 36 months after the effective date of this chapter . . . [revisor inserts date], the department shall submit to the natural resources board a report on whether the nonmetallic mining reclamation revenue, expenditures and fees established by this section and by other regulatory authorities are reasonable. The report shall be prepared in consultation with the nonmetallic mining advisory committee established under s. NR 135.51.

Note: The department intends to continue to consult and seek the advice of representatives of persons affected by the fees established by the department and other regulatory authorities for the purpose of preparing the report to the natural resources board required by this subsection.

NR 135.40 FINANCIAL ASSURANCE. (1) NOTIFICATION. The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under sub. (3).

(2) **FILING.** Following approval of the nonmetallic reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with the regulatory authority. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be payable exclusively to the regulatory authority that has jurisdiction and who issues the approval for the reclamation plan. In cases where the regulatory authority changes from one jurisdiction to another all financial assurance shall be made payable to the regulatory authority that currently has primary regulatory responsibility in that jurisdiction.

(3) **AMOUNT AND DURATION OF FINANCIAL ASSURANCE.** The amount of financial assurance shall equal as closely as possible the cost to the regulatory authority of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the regulatory authority to assure it equals outstanding reclamation costs. Any financial assurance filed with the regulatory authority shall be in an amount equal to the estimated cost to the regulatory authority for reclaiming all sites the operator has under project permits. The regulatory authority may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the mine reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.

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

(5) **MULTIPLE PROJECTS.** Any operator who obtains a permit from the regulatory authority for 2 or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the regulatory authority.

(6) **MULTIPLE JURISDICTIONS.** In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee needing to prove financial assurance with more than one regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two or more sites of less than one acre by the same operator, except that governmental units are not required to obtain financial assurance.

(7) **CERTIFICATION OF COMPLETION AND RELEASE.** (a) The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. The regulatory authority 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 regulatory authority may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete the regulatory authority shall issue a certificate of completion and shall release the financial assurance.

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

(c) A regulatory authority may make a determination under this subsection that:

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

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

(a) A permit is revoked under s. NR 135.25 and the appeals process has been completed.

(b) An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

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

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

(11) **BANKRUPTCY NOTIFICATION.** The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within 10 days of commencement of the proceeding.

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

(13) **NET WORTH TEST.** (a) Only an operator that meets the definition of "company" in s. 289.41 (1) (b), Stats., may use the net worth method of providing financial assurance.

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

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

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

(e) In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under an applicable nonmetallic mining reclamation ordinance.

NR 135.41 INTERIM RECLAMATION WAIVER. If the regulatory authority determines that areas within a mining site have been successfully reclaimed on an interim basis in accordance with the reclamation plan, the regulatory authority:

(1) Shall waive annual acreage fees for those areas, and

(2) May reduce or waive financial assurance requirements for those areas.

NR 135.42 REGULATORY AUTHORITY RIGHT OF INSPECTION. (1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employe or agent of the regulatory authority or the department who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, the applicable reclamation ordinance, this chapter or ch. 295, subch. I, Stats. Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

(2) If requested, the department 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 ch. 295, subch. I, Stats.

NR 135.43 ENFORCEMENT, ORDERS, PENALTIES. (1) **LOCAL ORDERS AND ENFORCEMENT.** The regulatory authority that administers a nonmetallic mining reclamation ordinance, or an agent designated by that governing body, may do any of the following

(a) Issue an order, requiring an operator to either comply with provisions of or cease violations of ch. 295, subch. I, Stats., this chapter, an applicable reclamation ordinance, a nonmetallic mining reclamation permit, permit conditions or an approved mining reclamation plan.

(b) Issue a special order suspending or revoking a nonmetallic mining reclamation permit under s. NR 135.25, or directing an operator to immediately cease an activity regulated under this chapter or under an applicable reclamation ordinance until the necessary plan approval is obtained.

(c) Submit an order to abate violations of the nonmetallic mining reclamation ordinance to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.

(2) **RIGHT OF REVIEW.** A person holding a reclamation permit who is subject to an order pursuant to sub. (1) shall have the right to review the order in a contested case hearing under s. 68.11 Stats., notwithstanding the provisions of ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), Stats.

(3) **DEPARTMENT ORDERS.** (a) If the department is the regulatory authority, it may issue an order as provided in sub. (1).

(b) In addition to orders issued under sub. (1), the department may issue a special order directing the immediate cessation of an activity regulated under this section until the nonmetallic mining site complies with the nonmetallic mining reclamation standards established under subch. II.

(c) A person holding a reclamation permit who is subject to an order issued under this subsection shall have the right to review the order in a contested case under s. 227.42, Stats.

(4) PENALTIES. (a) Any person who violates this chapter or an order issued under sub. (1) or (3) may be required by the regulatory authority 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 this section is suspended, stayed or enjoined, this penalty does not accrue. The cost of enforcement incurred by the regulatory authority shall be considered in establishing these forfeitures.

(b) Except for the violations referred to in par. (a), any person who violates ch. 295 subch. I, Stats., this chapter, any reclamation plan approved pursuant to this chapter or an order issued under sub. (1) or (3) 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 this section is suspended, stayed or enjoined, this penalty does not accrue.

SUBCHAPTER V - DEPARTMENT OVERSIGHT AND ASSISTANCE

NR.135.44 DEPARTMENT REVIEW OF PRE-EXISTING ORDINANCES. (1) Any county or municipality that intends to enforce a nonmetallic mining reclamation ordinance that was in effect before June 1, 1993 shall submit a copy of the ordinance to the department.

(2) If the department finds that any part of the submitted reclamation ordinance is not at least as restrictive as the requirements of this chapter, or is not adequate to effect the purposes of ch. 295, subch. I, Stats., and meet the requirements of this chapter, it shall communicate this finding and the basis for it to the county or municipality in writing. The county or municipality may amend its reclamation ordinance and submit the amended ordinance to the department for a determination under this subsection of whether the amended ordinance is at least as restrictive as the requirements of this chapter. The county or municipality may continue administering its reclamation ordinance while working to amend the ordinance to comply with this chapter. Where amendment is necessary pursuant to this subsection, the county or municipality shall submit a copy of the amended reclamation ordinance as enacted to the department.

NR 135.45 DEPARTMENT REVIEW OF NEW ORDINANCES. (1) A county or municipality which proposes to adopt a nonmetallic mining reclamation ordinance in accordance with this chapter shall submit the proposed ordinance to the department for review and a determination of compliance at least 45 days prior to its adoption. The county or municipality may submit a description of its proposed nonmetallic mining program to the department for technical advice.

(2) The department shall determine whether the ordinance will comply with this chapter.

(3) Within 30 days of receipt of a proposed ordinance under this section, the department shall advise the county or municipality of its determination under sub. (2).

(4) Before the governing body of a county or municipality adopts a proposed ordinance, it shall obtain a determination of compliance from the department under this section.

(5) Upon enactment, the county or municipality shall submit a final copy of the ordinance to the department.

NR 135.46 AMENDMENT OF ORDINANCES. A county or municipality may not amend its nonmetallic mining reclamation ordinance in a manner which makes it more or less restrictive than this chapter. The county or municipality shall submit a copy of an amended ordinance to the department.

NR 135.47 DEPARTMENT AUDITS. (1) The department shall periodically review the nonmetallic mining program of each regulatory authority to determine if the program is being conducted in compliance with this chapter, and is effective and consistent in ensuring operator compliance with the statewide uniform reclamation standards contained in this chapter.

(2) The program review shall include a performance audit and on-site inspections of mining operations within the jurisdiction.

(3) During the performance audit the department may evaluate the regulatory authority with respect to all of the following:

(a) Compliance with the county or local regulatory authority's nonmetallic mining reclamation ordinance and the standards in this chapter.

(b) The procedures employed by the regulatory authority regarding reclamation plan review, and the issuance and modification of permits.

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

(d) The method and effectiveness of fee collection.

(e) Procedures to accurately forward the department's portion of collected fees in a timely fashion.

(f) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.

(g) Responses to citizen complaints.

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

(i) The maintenance and availability of records.

(j) The number and type of approvals for alternative requirements issued pursuant to this chapter.

(k) 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. NR 135.40(7).

(L) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the regulatory authority to implement its nonmetallic

mining reclamation program.

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

(n) Any other performance criterion that the department may deem necessary to ascertain compliance with this chapter.

(4) The department shall issue a written determination to the audited regulatory authority not less than every 10 years within 90 days of its audit, of whether or not the reclamation program administered by the regulatory authority is in compliance with the provisions of this chapter.

(5) If the department finds and states, within 90 days of its audit, in its written determination that the regulatory authority is not in compliance with this chapter, the department shall give the regulatory authority adequate opportunity to correct deficiencies and respond to the department's comments.

(6) Following a preliminary determination that a nonmetallic mining reclamation program administered by a county or local government regulatory authority is not achieving compliance with this chapter, the department shall consult with the nonmetallic mining advisory committee.

NR 135.48 NONCOMPLIANCE HEARING. If, as a result of adoption of an ordinance or an audit pursuant to s. NR 135.47, the department determines that a regulatory authority is not in compliance with this chapter and has not corrected deficiencies after written notice, the department may schedule a hearing regarding whether the regulatory authority shall continue administering its nonmetallic mining reclamation program. The department shall provide 30 days notice to the regulatory authority prior to conducting the hearing. The hearing shall be held within the jurisdiction of the regulatory authority. The department shall issue a written decision of its conclusion as soon as practicable after the hearing.

NR 135.49 MUNICIPAL NONCOMPLIANCE, CONSEQUENCES. (1) If, as a result of a noncompliance hearing held pursuant to s. NR 135.48, the department issues a written decision finding a municipality is out of compliance with this chapter, the municipality's authority to administer its nonmetallic mining reclamation program shall be revoked. In this case, the applicable reclamation ordinance of the county in which the municipality is located shall apply in the municipality.

(2) A municipality whose authority has been revoked may apply to the department to resume administration of its applicable reclamation ordinance and nonmetallic mining reclamation program after 3 years have elapsed since revocation. The department, after hearing, may approve the municipality's request to resume administering its nonmetallic mining reclamation program if it finds that the municipality demonstrates the capacity to comply with this chapter.

NR 135.50 COUNTY NONCOMPLIANCE, CONSEQUENCES. (1) If as a result of a noncompliance hearing held pursuant to s. NR 135.48, the department issues a written decision finding a county is out of compliance with this chapter, the department shall, as soon as practicable after the hearing, assume responsibility for the administration of the nonmetallic mining reclamation ordinance and program in that county, including collection of fees and review and approval of

reclamation plans and permit applications.

(2) Municipalities that are approved to administer an applicable reclamation ordinance and program may continue to do so after the department begins to administer a nonmetallic mining program pursuant to this section. However, no municipality may enact for the first time an applicable reclamation ordinance during the time that the department administers the program in the county in which the municipality is located.

(3) The county found to be in noncompliance may apply to the department, at any time to resume administration of the nonmetallic mining reclamation program. The department, after hearing, may approve the county's request to resume administering its nonmetallic mining reclamation program if it finds that the county demonstrates the capacity to comply with this chapter.

NR 135.51 NONMETALLIC MINING ADVISORY COMMITTEE. (1) The department shall appoint a nonmetallic mining advisory committee to advise it on the administration of this chapter and ch. 295, subch. I, Stats.

(2) The nonmetallic mining advisory committee shall consist of 9 members appointed for terms not exceeding 3 years. Members shall represent economic, scientific and cultural viewpoints and shall include a representative from businesses that extract nonmetallic minerals, a representative from a business that uses nonmetallic minerals for road building and other purposes and a representative of an organization of persons who administer county zoning ordinances. The nonmetallic mining advisory committee shall meet at least annually.

(3) The nonmetallic mining advisory committee shall be consulted before the department may hold a hearing on revoking a nonmetallic mining reclamation program pursuant to s. NR 135.48.

NR 135.52 DEPARTMENT ASSISTANCE. (1) In order to assist regulatory authorities in the development, implementation and administration of nonmetallic mining reclamation programs, the department may provide training workshops, written materials, and technical assistance addressing how to establish and implement a nonmetallic mining reclamation program. The department may make computer software available to regulatory authorities to assist in record keeping and in the generation of standard forms.

Note: Specific mine safety training for reclamation inspectors may be made available through the department of commerce or the federal mine safety and health administration.

(2) Any party may request the department's technical opinion in a matter involving a dispute between a regulatory authority and a nonmetallic mine operator.

SUBCHAPTER VI - REGISTRATION OF MARKETABLE NONMETALLIC MINERAL DEPOSITS

NR 135.53 DEFINITIONS. In this subchapter:

(1) "Contiguous parcels" means 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 nonmetallic mineral deposit" means a nonmetallic mineral deposit that meets the criteria in s. NR 135.54.

(2m) "Permitted or conditional use" means conducting nonmetallic mining under any existing zoning if one of the criteria in s. NR 135.56(3)(b) is met.

(3) "Zoning authority" means any county or municipal zoning board or other authority which exercises authority to zone the land which a landowner seeks to register under this subchapter.

NR 135.54 MARKETABLE NONMETALLIC MINERAL DEPOSIT. A marketable nonmetallic 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.

NR 135.55 WHO MAY REGISTER A MARKETABLE NONMETALLIC MINERAL DEPOSITS. Beginning on June 1, 1994, a landowner may register his or her land pursuant to this subchapter.

NR 135.56 REGISTRATION REQUIREMENTS. (1) The registration shall include a legal description delineating the land and a certification and delineation by a registered professional geologist or a registered professional engineer that the land has a marketable nonmetallic mineral deposit. In making this certification, the registered geologist or registered professional engineer shall describe the type and quality of the nonmetallic 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 nonmetallic 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 nonmetallic mining is a permitted or conditional use for the land under zoning in effect on the day in which notice is provided to the zoning authorities pursuant to sub. (4).

(b) Nonmetallic 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 nonmetallic 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 nonmetallic mining as a permitted or conditional use as a subset of the general uses listed for that zoning category, even though nonmetallic mining is not expressly referred to in the zoning.

(c) If the existing zoning requires a conditional use permit for nonmetallic 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 proposed registration and supporting information shall be provided to each zoning authority if the land is zoned, the county regulatory authority, the municipal regulatory authority if one exists, the city, village or town in which the deposit is located, and the department at least 120 days prior to filing of the registration. Each zoning authority shall maintain records of proposed registrations of lands containing marketable nonmetallic mineral deposits which they shall receive in a manner of the zoning authority's choosing.

(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 nonmetallic 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 deed notice in the office of registrar of deeds pursuant to s. 59.43(1)(a), Stats., in the county in which the land is located no sooner than 121 days and no later than 240 days after notice to zoning authorities has been provided pursuant to sub. (4).

NR 135.57 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 nonmetallic mineral deposit as defined in s. NR 135.54.
- (3) The parcels are contiguous as defined in s. NR 135.53(1).

NR 135.58 OBJECTION TO REGISTRATION BY A ZONING AUTHORITY. (1) A zoning authority of land that a landowner intends to register as a marketable nonmetallic mineral deposit may object to the proposed registration only if it gives notice of its intent to object and the reasons for its objection no later than 60 days after receiving notice of intent pursuant to s. NR 135.56(3). 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 nonmetallic mining under the criteria in s. NR 135.56(3)(b); or

(b) There is not a marketable nonmetallic mineral deposit, as defined in s. NR 135.54, 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.

NR 135.59 DURATION AND RENEWAL OF REGISTRATION. (1) Registration of land containing a marketable nonmetallic 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 nonmetallic mineral deposit if the deposit has been commercially depleted.

(3) (a) A landowner may renew registration of land containing a marketable nonmetallic 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 deed notice renewing registration with the county registrar 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. NR 135.58, but only on the grounds that there is no longer a marketable nonmetallic 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 nonmetallic 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 nonmetallic 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 nonmetallic mineral deposit may not be rescinded by the county in which it is located, 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. NR 135.61.

NR 135.60 PREVIOUSLY REGISTERED DEPOSITS. (1) Land that has been registered as an economically viable nonmetallic mineral deposit under s. 144.9407(9), 1993 Stats. or s. 295.20, Stats. prior to the effective date of this chapter . . . [revisor inserts date] shall become a registered marketable nonmetallic mineral deposit to which this subchapter applies.

(2) Land registered under sub. (1) shall remain registered as a marketable nonmetallic 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 registrar of deeds in the county in which the nonmetallic mineral deposit is located. After this 10-year registration period, the land may be re-registered as a marketable nonmetallic mineral deposit in accordance with s. NR 135.56. Land which has become registered

pursuant to sub. (1) may not be re-registered for a 10-year term as provided in s. NR 135.59(3).

NR 135.61 TERMINATION OF REGISTRATION OF A DEPLETED DEPOSIT. The landowner may terminate registration under this subchapter of land containing a marketable nonmetallic 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 register of deeds in the county in which the land is located.

NR 135.62 RELATIONSHIP TO PLANNING AND ZONING. (1) A county or municipality that has received notice of intent to register pursuant to s. NR 135.56(3), 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 nonmetallic mineral deposit in a manner that would permanently interfere with the present or future extraction of the nonmetallic 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 register of deeds as the recorded document.

(3) The limitation of government action in sub. (1) applies to land where a zoning authority with jurisdiction has provided notice of intent to object to registration pursuant to s. NR 135.57(1), until the time the registration expires, is terminated, or the objecting zoning authority finally prevails in court action pursuant to s. NR 135.58(3) to sustain its objection.

(4) (a) Notwithstanding sub. (1), a county or municipality may rezone land which contains a marketable nonmetallic mineral deposit and upon which mining has not begun on any portion if the rezoning is 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 nonmetallic mineral deposit until the expiration of the current registration period or the one-time registration renewal period under s. NR 135.59(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. NR 135.58(1)(a), to reregistration of land containing a marketable nonmetallic mineral deposit.

(c) Registration of land containing a marketable nonmetallic 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 a county, municipality or agency shall make all reasonable provisions to preserve identified marketable nonmetallic mineral deposits.

NR 135.63 RIGHT OF EMINENT DOMAIN. Nothing in this subchapter affects any state, county or municipal authority to acquire property by eminent domain.

NR 135.64 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 nonmetallic mineral deposit was registered pursuant to this subchapter.

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

SECTION 2. NR 340.05(3m) is created to read:

NR 340.05(3m) In addition to all other requirements of this chapter, reclamation plans required by this section shall include a designation of post-mining land use and comply with the reclamation standards established in ch. NR 135.

SECTION 3. NR 340.06(3)(i) is created to read:

NR 340.06(3)(i) Reclamation as proposed in the plan required by s. NR 340.05 shall comply with the reclamation standards established in ch. NR 135.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on May 23, 2000

The rules shall take effect on December 1, 2000

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)