

Clearinghouse Rule 06-024

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCE BOARD REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resource Board proposes an order to **repeal** NR 135.03(7) and (18), 135.19(6)(b), 135.20(4), 135.21(1) and 135.39(7); to **renumber** NR 135.39(1)(c); to **renumber and amend** NR 135.19(6)(a) and 135.21(2) to (4); to **amend** NR 135.02 (1), (2) and (3)(g), 135.03(19), 135.06(5)(Note), 135.09(1) and (2)(Note), 135.16, 135.17(3)(a), 135.19 (1), (2), (4)(a) and (7), 135.20(1), (2)(intro.) and (3)(a), 135.32 (1) and (2), 135.36(2), 135.37(intro.) and (4), 135.39(1)(a)1. and (2) to (5), 135.47(3)(a) and (6), 340.055(title), (intro.), (1), (4) to (7); to **repeal and recreate** NR 135.03(20), 135.10, 135.18, 135.39(1)(b), 135.52 and 350.055(3); and to **create** NR 135.03(8m), (9m), (9n) and (17m), 135.19(4)(j), 135.20(3)(c)(Note), 135.39(1)(c) and 340.055(5m) pertaining to the reclamation of nonmetallic mining sites.

WA-14-06

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted

ch. 295 subch. I. Stats., Section 30.201, Stats.

Statutory Authority

Sections 30.201, 295.12, and 227.11 (2) (a), Stats.

Explanation of Agency Authority

This order proposes amendments to ch. NR 135 Wis. Admin. Code, which requires the reclamation of nonmetallic mining sites in Wisconsin. The Department was directed to create the rule by s. 295.12(1), Stats. Finally, NR 340.055 is amended to reflect recent statutory changes to allow greater flexibility for operators in providing financial assurance.

Related Statute or rule

none.

Plain Language Analysis

The proposed changes to Chapter NR 135, Wis. Adm. Code, would eliminate some existing rule language and administrative procedures that are no longer necessary. Mainly, language that was necessary to allow active mines and new county programs to gradually come into compliance with state law is being eliminated. Also, after more than five years of experience and on the advice of Nonmetallic Mining Advisory Committee (NMAC) some clarification of language and administrative procedures were deemed necessary. The rule amendment makes some minimal changes to uniform statewide reclamation standards and some important changes to administrative procedures to programs administered by county and local government. The most significant change is to streamline the procedures for fee collection and corresponding reporting requirements. In addition, a nominal fee increases is proposed based upon an adjustment for inflation. This adjustment affects only the portion of the fees collected by regulatory authorities which are subsequently forwarded to the DNR to cover its administrative costs. Finally, changes to Ch. NR 340, Wis. Adm. Code. are proposed to comply with recent statutory changes. The mandated rule revision will provide increased flexibility to operators in meeting NR 340 program financial

assurance requirements. These changes increase the financial assurance options available to operators and will harmonize the NR 340 and NR 135 rules.

Summary of and Preliminary Comparison to Existing or Proposed Federal Regulations Intended to Address the Activity to be Regulated by the Proposed Rule Revisions

There are no comparable federal regulations pertaining to nonmetallic mining reclamation.

Comparison of Similar Rules in Adjacent States (MN, Iowa, IL and MI)

Adjacent states do not have the consistent approach to the regulation of nonmetallic mine reclamation that is in place in Wisconsin. Currently, Minnesota has a non-regulatory approach based on education and on providing technical support to mine operators. Minnesota is considering a regulatory framework similar to Wisconsin. A recent effort involving the Aggregate Resources Task Force resulted in the interim recommendation that voluntary Best Management Practices (BMPs) be employed in reclamation. Further, the task force recommended that minimum statewide reclamation standards be developed for aggregate mining. Development of the standards would be coordinated by the Department of Natural Resources, Division of Lands and Minerals with input from stakeholders including government, the aggregate industry, environmental groups, and other interested parties. The minimum statewide reclamation standards would, like Wisconsin, be administered by counties or cities.

The Illinois program differs from the Wisconsin program in two primary ways. First, it is administered by the state as opposed to Wisconsin's approach of administration by county and municipal government. Second, the Illinois approach is designed to focus only on the largest nonmetallic mines. About 70% of the operations are exempt under criteria provided by The Surface Mined-Land Conservation and Reclamation Act (225 ILCS 715). A reclamation permit is required only for those aggregate operations which mine to a depth of 10 feet or greater or where the operation exceeds 10 acres. Although there is no license requirement, an annual fee is assessed on all mines regardless of exemption status. The fee funds program administration and also includes costs associated with the recent addition of a blasting certification and training program.

Iowa does not issue permits but does require a license and a fee. While not a regulatory program site inspections are performed and a minimal bond is required. There is no enforcement authority at the state level. In addition, nonmetallic mining may be subject to regulation at the county and local level through the zoning process.

In Michigan there is a wide variety of state and local regulations that may apply to nonmetallic mine reclamation. Many variables, including the kind of mineral, its location and the mining practice utilized dictate the level of regulatory coverage and affect the number of state and local regulations that may apply. The existing regulatory scheme is reminiscent of the situation that existed in Wisconsin prior to the inception of the Nonmetallic Mining Reclamation Program. At the state level, there exists a complex situation in which multiple Department of Environmental Quality (DEQ) divisions, besides other state agencies, may or may not have regulations pertaining to nonmetallic mine reclamation. For example, while the Geological Survey in the (DEQ) is the lead agency involved with the reclamation of non-metallic mines and quarries only operators of quarries are required to submit annual mining and reclamation plans for evaluation by DEQ staff. However, under state reclamation regulations most other nonmetallic mining operations - involving sand, gravel, peat, marl and clay - are specifically exempt by definition. On the other hand, when mining impacts sand dunes there are specific regulations and a strong state regulatory scheme including permitting and inspections that apply. Finally, nonmetallic mining including sand and gravel operations are subject to regulation at the county and local level through local ordinances and the zoning process.

Summary of the Factual Data and analysis that Support the Proposed Rule Revisions

The Chapter NR 135, Wis. Adm. Code, has been in effect since December 2000. First, start-up language that was necessary to allow active mines and new county programs to gradually come into compliance with state law is being eliminated. Further, as a result of nearly five years of experience gained in administration of the program, the need for refinement of certain procedures and clarification of existing language has become apparent. Finally, the department has accepted suggested rule changes from a wide spectrum of stakeholders. The rule revisions are being developed in consultation with the Nonmetallic Mining Advisory Committee (NMAC) which met on October 20 and December 1 of 2005. The NMAC is a nine-member advisory body created by administrative rule. The NMAC represents those affected by the rule including mine operators, road builders, county and municipal government, citizen/environmental and scientific (UW extension) interests.

Any analysis and Supporting Documentation that the Agency Used in Support of the Determination of the Revised Rule's Effect on Small Business.

The existing rule contains several provisions designed to help small businesses that are not affected by these proposed revisions. The proposed rule revisions directly affect administration of county and municipal reclamation programs. This rule package will have no significant economic effect on small business. The proposed revision contains a nominal fee increase based on inflation and applies to those fees that are collected by counties and municipalities on behalf of the DNR. However, this increase is expected to be offset as a result of rule revisions that streamline administrative procedures. Simplified procedures for fee collection and corresponding reporting requirements will improve efficiency and result in lower transactional costs. For additional information on how the current rule addresses impacts to small business please see the original evaluation ("Attachment 7" to SW-18-95) entitled "Small Business Analysis" that is included in this rule package.

Effect on Small Business

The rule revisions will have a minimal effect on both large and small businesses. The existing rule contains several provisions designed to help small businesses. While fees collected by counties and municipalities on behalf of the DNR will increase this will be offset by streamlined procedures for fee collection and corresponding reporting requirements that will improve efficiency and result in lower transactional costs.

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Comments are submitted to the Following Address and the Deadline for Submittal

Bureau of Waste Management
PO Box 7921
Madison, WI 53707-7921
Attention: NR 135 Revisions

Comments may be electronically submitted at the following Internet site: adminrules.wisconsin.gov

Deadline for comments is April 28, 2006.

SECTION 1. NR 135.02 (1) and (2) are amended to read:

NR 135.02(1)(title) ~~INITIAL APPLICABILITY.~~ This chapter applies to all nonmetallic mining sites ~~operating on or commencing to operate after 8 months following December 1, 2000,~~ except as exempted in sub. (3). This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases ~~ceased before 8 months following December 1, 2000~~ August 1, 2001.

(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 county, 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, county or a municipality.

SECTION 2. NR 135.02 (3) (g) is amended to read:

NR 135.02(3)(g) Nonmetallic mining at nonmetallic mining sites ~~that affect~~ where less than one acre of total affected acreage occurs over the life of the mine.

SECTION 3. NR 135.03 (7) is repealed.

SECTION 4. NR 135.03 (8m), (9m), (9n) and (17m) are created to read:

NR 135.03 (8m) "Highwall" means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that is steeper than 3:1.

(9m) "Licensed professional geologist" means a person who is licensed as a professional geologist pursuant to ch. 470, Stats.

(9n) "Licensed professional hydrologist" means a person who is licensed as a professional hydrologist pursuant to ch. 470, Stats.

(17m) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

SECTION 5. NR 135.03 (18) is repealed.

SECTION 6. NR 135.03 (19) is amended to read:

NR 135.03 (19) "Registered professional engineer" means a person who is registered as a professional engineer pursuant to ~~ss. s.~~ s. 443.04 and ~~443.09,~~ Stats.

SECTION 7. NR 135.03 (20) is repealed and recreated to read:

NR 135.03 (20) "Regulatory authority" means either of the following:

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

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

(c) The department, in cases where a county mining reclamation program is no longer in effect but only if there is no applicable reclamation ordinance enacted by the municipality in which the nonmetallic mining site is located.

SECTION 8. NR 135.06 (5) (Note) is amended to read:

Note: Other applicable environmental, zoning or land use regulations may include chs. NR 103, 115, 116, 117, 205, 216, 269, 105, 106, 140, 150, 151, 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.

SECTION 9. NR 135.09 (1) is amended to read:

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

SECTION 10. NR 135.09 (2) (Note) is amended to read:

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 University of Wisconsin Soil Science 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.

SECTION 11. NR 135.10 is repealed and recreated to read:

NR 135.10 Final grading and slopes. (1) All areas affected by mining shall be addressed in the approved reclamation plan to provide that a stable and safe condition consistent with the post mining land use is achieved. The reclamation plan may designate highwalls or other unmined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation or designate other areas affected by mining including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection the regulatory authority may require that either: a site-specific engineering analysis performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.

(2) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one or more of the following: alternative requirements are approved under s. NR 135.26, steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan, or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be

reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide the optimum adherence between the topsoil or topsoil substitute material and the underlying material.

(3) When the approved post-mining land use includes a body of water the approved final grade at the edge of a body of water shall extend vertically 6 feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.

SECTION 12. NR 135.16 is amended to read:

NR 135.16 RECLAMATION PERMIT REQUIRED. ~~After 9 months following December 1, 2000 any operator who conducts~~ No person may engage in nonmetallic mining shall obtain a or in nonmetallic mining reclamation without obtaining a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance and this chapter, unless the activity is specifically exempted in ss. NR 135.02 (1), (3) or 135.03(16)(b). ~~No person may engage in nonmetallic mining or in nonmetallic mining reclamation after 9 months following December 1, 2000 without obtaining a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance and this chapter unless so exempted.~~

SECTION 13. NR 135.17 (3) (a) is amended to read:

NR 135.17(3)(a) Neither the county nor the municipality in which the nonmetallic mining site is located has enacted or has in effect an applicable reclamation ordinance pursuant to this chapter.

SECTION 14. NR 135.18 is repealed and recreated to read:

NR 135.18 Reclamation permit application. (1) APPLICATION REQUIRED. (a) The operator of any nonmetallic mine 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. (2).
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.

(2) 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.

SECTION 15. NR 135.19 (1), (2) and (4)(a) are amended to read:

NR 135.19(1) PLAN REQUIRED. An operator who conducts or plans to conduct nonmetallic mining ~~following 8 months after December 1, 2000~~ 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 location of surface waters and the existing drainage patterns, the approximate elevation of ground water, ~~the location of surface waters and the existing drainage patterns as determined by existing hydrogeologic information.~~ In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.

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

(b) Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site.

(c) Existing topography as shown on contour maps of the site at intervals specified by the regulatory authority.

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

(e) ~~For existing mines proposed nonmetallic mine sites that include previously mined areas,~~ 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).

(4)(a) A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures and if necessary a site-specific engineering analysis performed by a registered professional engineer as provided by s. NR 135.10(1) and (2).

SECTION 16. NR 135.19(4)(j) is created to read:

NR 135.19(4)(j) A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses.

Note: Safety measures include visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

SECTION 17. NR 135.19(6)(a) is renumbered NR 135.19(6) and, as renumbered, is amended to read:

NR 135.19(6) CERTIFICATION OF RECLAMATION PLAN. The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. The If the operator does not own the land, the landowner and lessee or lessor, if different from the operator or owner, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation, ~~except as provided in par. (b).~~

SECTION 18. NR 135.19(6)(b) is repealed.

SECTION 19. NR 135.19(7) is amended to read:

NR 135.19(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~~ (1). Conditional approvals shall be issued according to s. NR 135.21(3), (2), and denials of permit applications shall be made according to s. NR 135.22.

SECTION 20. NR 135.20(1), (2)(intro.) and (3)(a) are amended to read:

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 1 notice pursuant to s. 985.07 (2) (1), 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~~ municipal 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. (intro.) ~~Except as provided in sub. (4) for existing mines, a~~ 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.

(3) HEARING ON RECLAMATION PERMIT APPLICATIONS TO THE DEPARTMENT. (a) ~~Except as provided in sub. (4) for existing mines, where~~ 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.

SECTION 21. A note following NR 135.20(3)(c) is created to read:

Note: Informational hearings are limited to reclamation of the nonmetallic mining site. Regulatory authority staff conducting the hearings should make it clear that the hearings cannot cover non-reclamation matters because they are beyond the scope of NR 135 reclamation. Non-reclamation matters are those related to zoning or subject to other local authority. These matters may include but are not limited to: traffic, setbacks, blasting, dewatering, hours of operation, noise or dust control or the question of whether to use the land for mining.

SECTION 22. NR 135.20(4) is repealed.

SECTION 23. NR 135.21(1) is repealed.

SECTION 24. NR 135.21(2) to (4) are renumbered (1) to (3) and, as renumbered, are amended to read:

NR 135.21(1)(title) ~~NEW AND REOPENED MINES~~ PERMIT ISSUANCE. Unless denied pursuant to s. NR 135.22, the regulatory authority shall approve in writing ~~a request~~ an application submitted pursuant to s. NR 135.18(2) ~~(1)~~ to issue a nonmetallic mining reclamation permit for a proposed nonmetallic mine. ~~where mining has not yet taken place after 8 months following December 1, 2000] or an existing nonmetallic mine where mining is not taking place after 8 months following December 1, 2000. 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) (2) 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 that meets the requirements of s. NR 135.19 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) (2) if appropriate, or shall deny the permit as provided in s. NR 135.22, no later than 60 days after completing the public hearing.~~

(2) 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. The approvals may not include conditions that are not related to reclamation. One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to s. NR 135.40 prior to beginning mining.

Note: It is not appropriate for the regulatory authority to impose conditions on a reclamation permit, or the approval of a reclamation plan that address matters not directly related to nonmetallic mining reclamation. These matters may include but are not limited to: traffic, setbacks, blasting, dewatering, hours of operation, noise or dust control or the question of whether to use the land for mining.

(3) 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 irresolvable issues may be referred to the department under s. ~~NR 135.48~~ NR 135.52.

SECTION 25. NR 135.32 (1) and (2) are amended to read:

NR 135.32(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 December 1, 2000, at which time e~~Counties shall administer them in conformance with this chapter. Within 6 months of the effective date of revisions to NR 135, counties shall amend their ordinance to ensure compliance with this chapter.

(2) MUNICIPALITIES PERMITTED TO ADMINISTER A NONMETALLIC MINING RECLAMATION PROGRAM. A municipality may, ~~beginning 6 months after December 1, 2000~~ 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. Municipalities shall administer these ordinances in conformance 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. Within 6 months of the effective date of revisions to NR 135, municipalities that continue to administer nonmetallic mining reclamation programs shall amend their ordinance to ensure compliance with this chapter.

SECTION 26. NR 135.36 (2) is amended to read:

NR 135.36(2) The annual report shall cover activities ~~for a~~ on unreclaimed acreage for the previous calendar year and be submitted ~~within 60 days of the end of the year~~ by January 31.

SECTION 27. NR 135.37(intro.) and (4) are amended to read:

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

(4) The number of acres being mined or unreclaimed acres.

SECTION 28. NR 135.39(1)(a)1. is amended to read:

NR 135.39(1)(a)1. Areas that are defined in s. NR 135.03(16)(b) as not subject to this chapter. Fees may not be assessed on acreage where nonmetallic mining is proposed and approved but where no nonmetallic mining has yet taken place.

Note: Fees are assessed only on active areas see definition on "unreclaimed acre" under s. NR 135.03 (25) (b).

SECTION 29. NR 135.39(1)(b) is repealed.

SECTION 30. NR 135.39(1)(c) is renumbered NR 135.39(1)(b).

SECTION 31. NR 135.39(1)(c) is created to read:

NR 135.39(1)(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.

SECTION 32. NR 135.39(2) to (5) are amended to read:

NR 135.39(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 ~~each subsequent~~ for the previous calendar year.

(b) Fees shall be paid to the regulatory authority on or before ~~December~~ January 31 for the ~~subsequent~~ previous calendar 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 regulatory authority shall transfer 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. (a) 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).

(b) 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 submitted to a regulatory authority 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~~ includes the department's statewide costs, as well as the department's estimated expenses as ~~local~~ the regulatory authority.

TABLE 1: Department Share of Annual Fees Collected by County and ~~Local~~ Municipal 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 <u>35</u>
6 to 10 acres	\$ 60 <u>70</u>
11 to 15 acres	\$ 90 <u>105</u>
16 to 25 acres	\$ 120 <u>140</u>

26 to 50 acres	\$ 140 <u>160</u>
51 acres or larger	\$ 150 <u>175</u>

(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~~ administer their reclamation program, including but not limited to, as the examination and approval of nonmetallic mining reclamation plans and its costs of ensuring compliance with this chapter, inspecting the reclamation of nonmetallic mining sites reclamation and administering their nonmetallic mining reclamation program. 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 2 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 <u>\$175</u>
6 to 10 acres	\$ 300 <u>\$350</u>
11 to 15 acres	\$ 450 <u>\$525</u>
16 to 25 acres	\$ 600 <u>\$700</u>
26 to 50 acres	\$ 700 <u>\$810</u>
51 acres or larger	\$ 750 <u>\$870</u>

(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~~ for review shall be as in Table 4 3. ~~This fee may not apply to nonmetallic mines that submit a reclamation plan pursuant to s. NR 135.18(1)(c).~~

TABLE 4 3: 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 <u>1045</u>
26 to 50 acres	\$ 1200 <u>1400</u>
51 or more acres	\$ 1500 <u>1750</u>

(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.

SECTION 33. NR 135.39(7) is repealed.

SECTION 34. NR 135.47(3)(a) and (6) are amended to read:

NR 135.47(3)(a) Compliance with the county or ~~local~~ municipal regulatory authority's nonmetallic mining reclamation ordinance and the standards in this chapter.

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

SECTION 35. NR 135.52 is repealed and recreated to read:

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 or administrative opinion to interpret, clarify or to otherwise facilitate progress in permitting matters or in the resolution of any other matter between a regulatory authority and a nonmetallic mine operator.

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

(b) The party should provide a written request detailing the nature and facts of the dispute, a history of previous attempts to resolve the matter, a precise description of the issue or issues where dispute exists and upon which the department is requested to render its technical or administrative opinion.

(c) The department shall respond to requests for technical or administrative opinions in writing within 10 days indicating whether or not it will render a formal opinion on the matter. If the department acts to provide an opinion, it shall render its written opinion within 45 days of receipt of the request for a technical or administrative opinion. This timeframe may be extended where circumstances such as a lack of sufficient information prevent the department from rendering a valid technical or administrative opinion. In reaching its opinion, the department shall provide an opportunity for all parties to the dispute to provide relevant information and may consider the following: the need for a timely and expeditious resolution, environmental or health risk, economic hardship, whether the opinion is important to statewide program consistency considering significant departure from consistent administration of ch. NR 135 programs and to the uniform application of reclamation standards, or whether its opinion is precedent setting, or any other factors the department deems relevant.

Note: If the dispute is not resolved as a result of the department's opinion, 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. Please see s. NR 135.30(1) for more information on appeals procedures.

SECTION 36. NR 340.055(title), (intro.) and (1) are amended to read:

NR 340.055(title) ~~Bonding~~ **Financial assurance**. (intro.) ~~Bonding~~ A bond or alternative financial assurance is required for each site and multiple sites of less than one acre by the same operator, except that government units are not required to obtain bonds or alternative financial assurance.

(1) NOTIFICATION. The department shall determine the required ~~bonding~~ financial assurance level for progressive reclamation in staged operations or for reclamation in unstaged operations and shall notify the operator. Following approval of the permit, and as a condition of the permit, the operator shall file a bond as provided in sub. (2) or alternative financial assurance as provided in sub. (3) with the department. The bond or alternative financial assurance amount shall be sufficient to cover the cost to the state of hiring a contractor to complete reclamation or progressive reclamation in staged operations. The operator shall file the required bond or alternative financial assurance with the department prior to commencing the operation. Upon notification by the department of ~~bonding~~ bond or alternative financial assurance approval, the operator may commence operations and reclamation activities.

SECTION 37. NR 340.055(3) is repealed and recreated to read:

NR 340.055(3) ALTERNATIVE FINANCIAL ASSURANCE. (a) The operator may provide alternative financial assurance in lieu of a bond. Alternative financial assurance may include any of the following: cash; a certificate of deposit; an irrevocable letter of credit; an irrevocable trust, an escrow account, a government security; or any other demonstration of financial responsibility. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date.

(b) Each form of alternative financial assurance shall provide that it may not be cancelled, except after not less than 90 days notice to the department in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90 day notice of cancellation, the operator shall deliver to the department a replacement form of alternative financial assurance in absence of which the existing alternative financial assurance shall remain in effect.

(c) The alternative financial assurance shall provide that the operator will faithfully perform all requirements of ch. 30, Stats., and all provisions of this chapter and the permit.

(d) The alternative financial assurance shall be payable to the "State of Wisconsin, Department of Natural Resources".

(e) The level of alternative financial assurance for reclamation or progressive reclamation in staged operations shall be the larger amount of either \$2,000 per acre or \$0.25 per cubic yard of material excavated based on 1989 dollars unless the operator justifies a lesser amount to the department's satisfaction.

SECTION 38. NR 340.055(4) and (5) are amended to read:

NR 340.055(4)(title) BOND OR ALTERNATIVE FINANCIAL ASSURANCE REEVALUATION. The department may reevaluate and adjust the amount of the progressive reclamation bond or security deposit required for reclamation. Reclaimed areas may be released from the bond or alternative financial assurance coverage. Reevaluation shall be made pursuant to subs. (1) and (2).

(5)(title) MULTIPLE PROJECT PERMIT ~~BONDING~~ BOND OR ALTERNATIVE FINANCIAL ASSURANCE. Any operator who obtains a permit from the department for 2 or more sites may elect, at the time the second or subsequent site is approved, to post a single bond or alternative financial assurance in lieu of separate bonds or alternative financial assurances on each site. Any single bond or alternative financial assurance so posted shall be in an amount equal to the estimated cost to the state determined under subs. (1) and (2) for all sites. When an operator elects to post a single bond or alternative financial assurance in lieu of separate bonds previously posted on individual sites, a separate bond or alternative financial assurances

may not be released until the new bond or alternative financial assurance has been accepted by the department.

SECTION 39. NR 340.055(5m) is created to read:

NR 340.055(5m) INTEREST. Any interest earned by the bond or alternate financial assurance provided under this section shall be paid to the person operating the nonmetallic mining or reclamation project.

SECTION 40. NR 340.055(6) and (7) are amended to read:

NR 340.055(6)(title) BOND OR ALTERNATIVE FINANCIAL ASSURANCE RELEASE. The department shall release the operator's bond or alternative financial assurance if it finds, after inspection of the site, that the operator has fully carried out and completed reclamation of the site in accordance with the operation and reclamation plan, and has otherwise complied with ss. 30.19, 30.195 and 30.20, Stats., and this chapter. Final inspection shall be made not less than one year, nor more than 2 years, after the completion of reclamation.

(7) ABANDONED SITES. Bonds or alternative financial assurances for any site abandoned at the time a permit expires may not be released unless it is shown that no operations have occurred at that site and no potential for environmental pollution exists as a result of an operator's actions or inactions.

SECTION 40. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro), Stats.

SECTION 41. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on_____.

Dated in Madison, Wisconsin_____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)