

Article A: General

Sec. 16-1-1 Title

Nonmetallic mining reclamation ordinance for Bayfield County, Wisconsin.

Sec. 16-1-2 Purpose.

The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Bayfield County after the effective date of this Title 16 Chapter 1, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.

Sec. 16-1-3 Statutory Authority.

This chapter is adopted under authority of Section 295.13(1), Wisconsin Statutes, Section NR 135.32 Wisconsin Administrative Code, and Section 59.51, Wisconsin Statutes - for counties.

Sec. 16-1-4 Restrictions Adopted Under Other Authority.

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

Sec. 16-1-5 Interpretation.

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

the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

Note: Consistent with s. 295.12(1)(a), Stats., a county or municipal ordinance enacted pursuant to Ch. NR 135, Wis. Adm. Code is the method of putting in place uniform statewide standards for nonmetallic mining reclamation. Now that reclamation programs are set up, reclamation should not be required or otherwise regulated under zoning or other controls. This chapter pre-empts future zoning approvals or conditional use permits as a means to establish reclamation requirements. Zoning or other approvals finalized before Ch. NR 135-authorized reclamation programs (like ones using this model ordinance as a guide) can continue, and are contemplated by s. NR 135.21(1)(d), Wis. Adm. Code. Future zoning approvals or conditional use permits may be used to regulate other aspects of nonmetallic mining such as siting or operation.

Sec. 16-1-6 Severability.

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

Sec. 16-1-7 Applicability.

- (a) **Overall Applicability.** The requirements of this chapter apply to all operators of nonmetallic mining sites within Bayfield County except as exempted in sub. 16-1-7(b) and for nonmetallic mining sites located in a city, village or town within Bayfield County that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code. This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This chapter applies to nonmetallic mining conducted 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 for the waiver of financial assurance in sub. 16-1-14(c).
- (b) **Exemptions.** This chapter does not apply to the following activities:
1. Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under secs. 30.19, 30.195 or 30.20, Stats., and complies with Chapter NR 340, Wisconsin Administrative Code.
 2. Excavations subject to the permit and reclamation requirements of secs. 30.30 or 30.31, Stats.
 3. Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

4. Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
5. Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
6. Excavations for building construction purposes conducted on the building site.
7. Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.
8. Any mining operation, the reclamation of which is required in a permit obtained under ch. 293, Stats.
9. Any activities required to prepare, operate or close a solid waste disposal facility under ch. 289, Stats., or a hazardous waste disposal facility under ch. 291, Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
10.
 - a. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
 - b. This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.

- c. If a nonmetallic mining site covered under pars. (a) and (b) is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.
11. Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.
12. Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21, Stats.

Sec. 16-1-8 Administration.

The provisions of this chapter shall be administered by Bayfield County Planning and Zoning.

Sec. 16-1-9 Effective Date.

The provisions of this chapter shall take effect on May 29, 2007.

Sec. 16-1-10 Definitions.

Definitions. In this chapter:

1. **"Alternative requirement"** means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the Bayfield County pursuant to sec. 16-1-18.
2. **"Applicable reclamation ordinance"** means a nonmetallic mining reclamation ordinance, including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and subchapter I of ch. 295, Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in sub. (20) (c) if the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Chapter NR 135, Wisconsin Administrative Code.

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- 2m. **"Borrow site"** means an area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.
3. **"Contemporaneous reclamation"** means the sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.
4. **"Department"** means the Wisconsin Department of Natural Resources.
6. **"Environmental pollution"** has the meaning in s. 295.11(2), Stats.
8. **"Financial assurance"** means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in sec. 16-1-14 and is sufficient to pay for reclamation activities required by this chapter.
- 8m. **"Highwall"** means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds 3:1.
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.
- 9m. **"Licensed professional geologist"** means a person who is licensed as a professional geologist pursuant to ch. 470, Stats.
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 a nonmetallic mining reclamation plan approved under this chapter, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.
 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 that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.
 16. **"Nonmetallic mining site" or "site"** means all contiguous areas of present or proposed mining described in par. (a), subject to the qualifications in par. (b).
 - a. Nonmetallic mining site means the following:

- (1) The location where nonmetallic mining is proposed or conducted.
 - (2) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
 - (3) Areas where nonmetallic mining refuse is deposited.
 - (4) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
 - (5) Areas where grading or regrading is necessary.
 - (6) Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.
- b. "Nonmetallic mine site" does not include any of the following areas:
- (1) Those portions of sites listed in par. (a) not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.
 - (2) Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.
 - (3) Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.
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.
- 17m. **"Person"** means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

19. **"Registered professional engineer"** means a person who is registered as a professional engineer pursuant to s. 443.04, Stats.
20. **"Regulatory authority"** means one of the following:
 - a. The county in which the nonmetallic mining site is located, that has an applicable reclamation ordinance under s. 295.13, Stats., except where a municipality has adopted an applicable reclamation ordinance pursuant to par. (b).
 - b. The municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance under s. 295.14, Stats.
 - c. The department, in cases where a county mining reclamation program is no longer in effect under s. 295.14, Stats., but only if there is no applicable reclamation ordinance enacted by the municipality 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 for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this chapter.
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 August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under sub. 16-1-29(c). However the term does not include any areas described in par. (b).
- b. **"Unreclaimed acre"** or **"unreclaimed acres"** does not include:
- (1) Those areas where reclamation has been completed and certified as reclaimed under sub. 16-1-29(c).
 - (2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
 - (3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
 - (4) Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
 - (5) For purposes of fees under sec. 16-1-27, those areas within a nonmetallic mining site which Bayfield County has determined to have been successfully reclaimed on an interim basis in accordance with sub. 16-1-29(c).

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