

CHAPTER 21

NONMETALLIC MINING OPERATIONS

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PART I. GENERAL PROVISIONS.

21.01 Purpose.

The purpose of this chapter is to establish a local program to ensure effective reclamation of nonmetallic mining sites in Manitowoc County on which nonmetallic mining takes place in Manitowoc County and to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by Wis. Stat. § 295.12(1)(a) and contained in Wis. Admin. Code Ch. NR 135.

21.02 Statutory Authority.

This chapter is adopted under authority of Wis. Stat. §§ 59.51 and 295.13(1) and Wis. Admin. Code § NR 135.32.

21.03 Restrictions Adopted Under Other Authority.

This chapter is not intended to abrogate, annul, impair, interfere, or repeal any existing ordinance, permit, regulation, or rule which was previously adopted pursuant to other Wisconsin law and which does not concern nonmetallic mining reclamation. The provisions of this chapter 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 Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. 295.

21.04 Interpretation.

The provisions of this chapter shall be the applicable requirements for nonmetallic mining reclamation and shall be applied, construed, and interpreted so as to effectuate the purpose of this chapter and the purpose of Wis. Stat. § 295, subch. I, and Wis. Admin. Code § NR 135. If any term or requirement of this chapter is inconsistent with any provision or requirement of Wis. Stat. Ch. 295, subch. I, or Wis. Admin. Code Ch. 295, the more restrictive provision or requirements shall apply. Where a provision of this chapter is

required by statute or administrative code and the provision is unclear, the provision shall be interpreted to be consistent with the provisions of Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. 295.

21.05 Severability.

The provisions of this chapter are severable and if any provision or its application to any person or circumstance is declared unconstitutional or invalid, the remaining provisions or applications of this chapter that can be given effect without the invalid provision or application shall continue in effect.

21.06 Applicability.

- (1) This chapter applies to all nonmetallic mining sites within Manitowoc County operating on or commencing to operate after August 1, 2001, except as exempted by sec. 21.07.
- (2) This chapter shall apply 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.
- (3) This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001.

21.07 Exemptions. This chapter does not apply to the following:

- (1) Nonmetallic mining at a site or that portion of a site which is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under Wis. Stat. §§ 30.19, 30.195, or 30.20 and complies with Wis. Admin. Code Ch. 340.
- (2) Excavations subject to the permit and reclamation requirements of Wis. Stat. §§ 30.30 or 30.31.
- (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 repairs of an airport, highway, railroad, or 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 that affects less than one acre of total area over the life of the mine.
- (8) Any mining operation where reclamation is required in a permit obtained under Wis. Stat. Ch. 293.
- (9) Any activity required to prepare, operate, or close a solid waste disposal facility under Wis. Stat. Ch. 289 or a hazardous waste disposal facility under Wis. Stat. ch. 291 that is conducted on the property where the facility is located.
- (10) Nonmetallic mining conducted to obtain gravel, sand, soil, or stone for construction, reconstruction, maintenance, or repair of all or part of an airport, highway, railroad, or other transportation facility if the nonmetallic mining is subject to Wisconsin Department of Transportation (DOT) requirements relating to restoration of the nonmetallic mining site. This exemption shall apply only to nonmetallic mining operations during the term of a DOT contract of limited duration and for the purpose of construction of a specific transportation project where the DOT actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with those requirements. If a nonmetallic mining site is used to concurrently supply materials for a DOT project and for a project unrelated to the DOT project, the exemption in this paragraph shall apply provided that the site is required to be fully reclaimed under the DOT supervision pursuant to the project contract.
- (11) Dredging and disposal of spoils from dredging for navigational purposes, to construct or maintain farm drainage ditches, and for the remediation of environmental contamination.
- (12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under Wis. Stat. § 30.21.
- (13) Any area within a city, village, or town that has enacted and administers an ordinance pursuant to Wis. Stat. § 295.14.

21.08 Definitions. In this chapter:

- (1) “Alternative requirement” means an alternative to the reclamation standards of this chapter provided through a written authorization granted by sec. 21.29.
- (2) “Applicable reclamation ordinance” means a nonmetallic mining reclamation ordinance, including this chapter, which applies to a particular nonmetallic mining site and which complies with the requirements of Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. NR 135, unless the Wisconsin Department of Natural

Resources is the regulatory authority, in which case it means the relevant and applicable provision of Wis. Admin. Code Ch. NR 135.

- (3) “Borrowsite” means an area outside of a transportation project site from which gravel, sand, stone, or soil is excavated for use at the project site, but does not include commercial sources of gravel, sand, stone, or soil.
- (4) “Contemporaneous reclamation” means the sequential or progressive reclamation of portions of a 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.
- (5) “Department” means the Wisconsin Department of Natural Resources.
- (6) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land, or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.
- (7) “Existing mine” means a nonmetallic mine where nonmetallic mining occurred before August 1, 2001.
- (8) “Financial assurance” means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in sec. 21.25 and that 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.
- (10) “Municipality” means any city, town, or village.
- (11) “Nonmetallic mineral” means a commodity, material, or product consisting principally of naturally occurring nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, asbestos, beryl, clay, coal, diamond, feldspar, gravel, peat, sand, stone, talc, and topsoil.
- (12) “Nonmetallic mining” or “mining” means all of the following:
 - (a) Operations or activities at a nonmetallic mining site for the extraction from the earth for sale or use by the operator of mineral aggregates or nonmetallic minerals such as asbestos, beryl, clay, coal, diamond, feldspar, gravel, peat, sand, stone, talc, and topsoil. Nonmetallic mining includes use of mining equipment or techniques to remove material from the in-place nonmetallic mineral deposits, 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 agricultural crops, christmas trees, commercial sod, forest products, ornamental or garden plants, or plant nursery stock.

- (b) Processes performed at a nonmetallic mining site that are related to the extraction, preparation, or processing of mineral aggregates or nonmetallic minerals obtained from the site. These processes include, but are not limited to, blasting, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, crushing, dewatering, grading, screening, scalping, and stockpiling of materials.
- (13) “Nonmetallic mining reclamation” or “reclamation” means the rehabilitation of a nonmetallic mining site to achieve land use specified in a 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.
 - (14) “Nonmetallic mining reclamation plan” or “reclamation plan” means a plan for nonmetallic mining reclamation that has been prepared pursuant to this chapter.
 - (15) “Nonmetallic mining refuse” means waste soil, rock, mineral, and other natural material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable byproducts 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 of the following:
 - (a) The location where nonmetallic mining is proposed or conducted.
 - (b) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
 - (c) Areas where nonmetallic mining refuse is deposited.
 - (d) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
 - (e) Areas where grading or regrading is necessary.
 - (f) Areas where nonmetallic mining reclamation activities are carried out, such as channels for surface water diversion, revegetation test plots, or stockpile

areas or where structures needed for nonmetallic mining reclamation are located.

- (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 agents, contractors, employees, subsidiaries, or subcontractors.
- (18) “Registered geologist” means a person who is registered as a professional geologist pursuant to Wis. Stat. §§ 443.037 and 443.09.
- (19) “Registered professional engineer” means a person who is registered as a professional engineer pursuant to Wis. Stat. §§ 443.04 and 443.09.
- (20) “Regulatory authority” means:
 - (a) A municipality in which the nonmetallic mining is located and which has adopted an applicable reclamation ordinance.
 - (b) Manitowoc County if the municipality in which the nonmetallic mining is located has not adopted an applicable reclamation ordinance.
 - (c) Wisconsin Department of Natural Resources 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 the topsoil that was removed or disturbed by nonmetallic mining, or the provision of material to substitute for the topsoil that was removed or disturbed, for the purposes of providing adequate vegetative cover and stabilization of soil conditions to achieve a land use specified in the approved nonmetallic mining reclamation plan.
- (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 material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include soil 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 Wis. Stat. Ch. 283, or source material, special nuclear material, or by-product material as defined in Wis. Stat. § 254.31(1).
- (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 a reclamation plan.

- (24) “Topsoil substitute material” means soil or other unconsolidated material, either used alone or mixed with other beneficial material, which can provided the plant growth, site stability, and other attributes necessary to meet the success standards approved in a reclamation plan.
- (25) “Unreclaimed acre” or unreclaimed acres” means those unreclaimed areas where nonmetallic mining has occurred after August 1, 2001, and reclamation has not been completed or nonmetallic mining reclamation has been completed but is not yet certified as reclaimed.

21.09 Administration.

The provisions of this chapter shall be administered by the Manitowoc County Planning and Park Commission.

21.10 Effective Date.

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

PART II. STANDARDS.

21.11 Standards.

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

21.12 General Standards.

- (1) **Refuse and Other Solid Wastes.** Nonmetallic mining refuse shall be reused in accordance with the approved reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Department adopted pursuant to Wis. Stat. Chs. 289 and 291.
- (2) **Area Disturbed and Contemporaneous Reclamation.** Nonmetallic mining shall be conducted, to the extent practicable, to minimize the area disturbed and to provide for reclamation of portions of the site while mining continues on other portions of the site.
- (3) **Public Health, Safety, and Welfare.** All nonmetallic mining sites shall be reclaimed in compliance with federal, state, and local regulations governing public health, safety, and welfare.

- (4) **Habitat Restoration.** When the land use required by the approved reclamation plan requires plant, fish, or wildlife habitat, the land shall be restored, to the extent practicable, to a condition at least as suitable for such habitat as existed before the land was affected by mining operations.
- (5) **Compliance with Other Laws and Environmental Regulations.** Reclamation of nonmetallic mining sites shall comply with all applicable federal, state, and local laws, including those related to environmental protection, zoning, and land use control.

21.13 Surface Water and Wetlands.

Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Department's water quality standards for surface waters and wetlands contained in Wis. Admin. Code Chs. NR 102 and 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 approved reclamation plan. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.

21.14 Ground Water 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, a significant reduction in the quantity of groundwater reasonably available for future users of groundwater, or adverse effects on surface waters.
- (2) **Ground Water Quality.** Nonmetallic mining reclamation shall be conducted in a manner that does not cause groundwater quality standards in Wis. Admin. Code Ch. NR 140 to be exceeded at a point of standards application defined in that chapter.

21.15 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 approved reclamation plan in order to achieve the approved post-mining land use. Topsoil and topsoil substitute material removal shall be performed as required by the approved reclamation plan prior to any mining activity associated with any 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 prior to

mining or by obtaining topsoil or substitute material as needed to make up the volume of topsoil specified in the approved reclamation plan.

- (3) Storage. Removed topsoil or topsoil substitute material shall either be used in contemporaneous reclamation or stored in an environmentally acceptable manner as required by the approved reclamation plan. Stockpiled topsoil or topsoil substitute material shall be protected from erosion, further disturbance, or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

21.16 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 sec. 21.29 and stable slopes can be demonstrated based on a site-specific engineering analysis. The engineering analysis shall show that an 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, the 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 to allow for a safe exit.
- (3) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be redistributed shall be graded or otherwise prepared prior to redistribution to provide optimum adherence between the topsoil or topsoil substitute material and the underlying material.

21.17 Topsoil Redistribution for Reclamation.

Topsoil or topsoil substitute material shall be redistributed in accordance with the approved reclamation plan in a manner that minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed, except where uniform redistribution is undesirable or impractical. Redistribution shall not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

21.18 Revegetation and Site Stabilization.

Except for permanent roads or similar surfaces identified in the approved reclamation plan, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized in accordance with the approved reclamation plan. Such reclamation and stabilization shall be performed as soon as practicable after mining activity has permanently ceased in any part of the site.

21.19 Assessing Completion of Successful Reclamation.

- (1) Quantifiable criteria for assessing when reclamation is complete and when financial assurance may be released shall be specified in the approved reclamation plan.
- (2) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by on-site inspections by Manitowoc County or its agent; reports presenting results obtained during reclamation evaluations, including summarized data on revegetation, photo documentation, or other evidence; or a combination of inspections and reports.
- (3) Where the post-mining land use specified in the approved reclamation plan requires the site be returned to a pre-mining condition, the operator shall obtain baseline data on the pre-mining plant community for use in the evaluating reclamation.
- (4) Revegetation success may be determined by comparison to an appropriate reference area, comparison to baseline data acquired at the mining site prior to its being affected by mining, or comparison to an approved alternate technical standard.

21.20 Maintenance.

After the operator states that reclamation is complete and prior to release of financial assurance, the operator shall perform all maintenance necessary to prevent erosion, sedimentation, or environmental pollution; comply with the standards of this chapter; or to meet goals specified in the approved reclamation plan.

PART III. PERMITTING.

21.21 Nonmetallic Mining Reclamation Permit Application.

All operators of nonmetallic mining sites that operate on or after August 1, 2001, shall apply for a reclamation permit from Manitowoc County. All applications for reclamation permits under this section shall be accompanied by the following:

- (1) A brief description of the general location and nature of the site.

- (2) The legal description and tax parcel number of the property on which the site is located.
- (3) The name, address, and telephone number of all persons or organizations who are owners or lessors of the property on which the site is located.
- (4) The name, address, and telephone number of all persons or organizations who are operators at the site.
- (5) Certification by the operator of the operator's intent to comply with the statewide nonmetallic mining reclamation standards established in this chapter.

21.22 Existing Mines.

The operator of any nonmetallic mining site in operation on August 1, 2001, may apply for an automatic reclamation permit from Manitowoc County by providing the following information to the Manitowoc County Planning and Park Commission on or before August 1, 2001:

- (1) The information required by sec. 21.21.
- (2) The first year's annual fee required by sec. 21.38.
- (3) The operator's signed certification that it will provide Manitowoc County with a reclamation plan as required by sec. 21.24 and financial assurance as required by sec. 21.25.

21.23 New Mines.

The operator of any nonmetallic mining site that engages in or plans to engage in nonmetallic mining operations after August 1, 2001, that has not obtained an automatic reclamation permit pursuant to sec. 21.22 shall submit an application to the Manitowoc County Planning and Park Commission prior to beginning operations. The application shall include the following:

- (1) The information required by sec. 21.21.
- (2) The plan review and annual fees required by secs. 21.37 and 21.38.
- (3) The reclamation plan required by sec. 21.24.
- (4) The operator's signed certification that as a condition of the reclamation permit, it will provide the financial assurance required by sec. 21.25 prior to beginning operations.

21.24 Reclamation Plan.

- (1) All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan to Manitowoc County that meets the following requirements:
 - (a) Plan. An operator who conducts or plans to conduct nonmetallic mining on or after August 1, 2001, shall submit a reclamation plan to Manitowoc County as required by this chapter.
 - (b) 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:
 1. 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.
 2. Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site.
 3. Existing topography as shown on contour maps of the site at 10 foot contour intervals.
 4. Location of manmade features on or near the site.
 5. 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.
 - (c) Post-Mining Land Use. The reclamation plan shall specify a proposed post-mining land use for the site. The proposed post-mining land use shall be consistent with local land use plans and local zoning at the time the plan is submitted, unless a change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted. Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to Wis. Stat. § 91.75 shall be restored to agricultural use.
 - (d) 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 information shall be included:

1. A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing, and other structural slope stabilization measures.
2. The methods of topsoil or topsoil substitute material removal, storage, stabilization, and conservation that will be used during reclamation.
3. A plan or map that 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.
4. A plan or map that shows surface structures, roads, and related facilities after the cessation of mining.
5. The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.
6. A revegetation plan that includes the timing and methods of seed bed preparation; rates and kinds of soil amendments; seed application timing, methods, and rates; and mulching, netting, and other techniques needed to accomplish soil and slope stabilization.
7. Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established that 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.
8. A plan and, if necessary, a narrative showing erosion control measures to be employed during reclamation activities to address how reclamation activities will be conducted to minimize erosion and pollution of surface and groundwater.
9. A description of any areas that will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to sec. 21.40(4)(a) and that will be subsequently disturbed prior to final reclamation. The description shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards of this ordinance, and timing of interim and final reclamation.

10. The criteria for assuring successful reclamation in accordance with the standards established in Part II of this chapter.
 - (e) Certification of Reclamation Plan. 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 that such written certification is not required if the operator provides written evidence that the landowner and lessee have been provided with a written copy of the reclamation plan and that the operator has submitted a reclamation plan in accordance with sec. 21.24 for an existing mine or for a new or reopened mine that is located on land for which a lease agreement or memorandum of lease between the landowner and operator was recorded prior to August 1, 2001.
- (2) Use of Existing Plans and Approvals. To avoid duplication, the permit application and submittals required under this subsection may incorporate existing plans or materials that meet the requirements of this chapter by reference. Previously completed documents that include reclamation plans shall satisfy the requirements of the reclamation plan, provided that the document has been approved by a county or municipality and Manitowoc County finds that the plan designates a post-mining land use and describes reclamation measures that meet the reclamation standards of this chapter.
- (3) Approval of Reclamation Plan. Manitowoc County shall approve, conditionally approve, or deny the reclamation plan in writing.
- (4) Site Copy of Approved Plan. The operator shall keep a copy of the approved reclamation plan at the nonmetallic mining site, if practicable, or at the operator's nearest office or place of business.

21.25 Financial Assurance.

- (1) Requirement. All operators of nonmetallic mining sites in Manitowoc County, other than the State of Wisconsin, any state agency, board, commission, or department, or any municipality, shall prepare and submit proof of financial assurance.
- (2) Filing. Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance with Manitowoc County. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, any applicable reclamation ordinance, and the reclamation plan.
- (3) Amount and Review.

- (a) Amount. The amount of financial assurance shall equal as closely as possible the cost to Manitowoc County, as determined by Manitowoc County, of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The regulatory authority shall provide written notification to the operator of the amount of financial assurance required.
 - (b) Review. The amount of financial assurance may be reviewed periodically by Manitowoc County to assure it equals outstanding reclamation costs. The amount of financial assurance may be adjusted when required by Manitowoc County. Manitowoc County may adjust financial assurance based changes in the cost estimates for reclamation or in the prevailing or projected interest or inflation rates. The regulatory agency shall notify the operator in writing whenever adjustment is necessary and shall state the reasons for such adjustment.
- (4) Multiple Projects. Any operator who obtains a permit from Manitowoc County for two 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. However, no financial assurances previously posted on an individual mining site shall be released until the new financial assurance has been accepted by Manitowoc County.
- (5) 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 permit holder to provide financial assurance to more than one regulatory authority for the same nonmetallic mining site.
- (6) Duration of Financial Assurance. Financial assurance shall be required during the period of time necessary to establish the post mining land use declared and approved of in the reclamation plan, and financial assurance may extend beyond the duration of the permit if necessary to accomplish successful and complete implementation of the reclamation plan.
- (7) Form of Assurance.
 - (a) Financial assurance payable to Manitowoc County shall be provided by the operator and shall be by a bond or an alternate financial assurance. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, established escrow accounts, government securities, irrevocable letters of credit, irrevocable trusts, liens, or other security interests. Financial assurance arrangements may include, subject to the approval of Manitowoc County, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.

- (b) The financial assurance shall provide that it may not be canceled by the surety or other holder or issuer without at least a 90-day written notice to Manitowoc County by registered or certified mail. Certificates of deposit shall be automatically renewable or other assurances shall be provided at least 30 days before the maturity date. In the event of a notice of cancellation, the operator shall deliver a replacement proof of financial assurance to Manitowoc County at least 30 days prior to the expiration of the 90-day notice of cancellation. In the event that replacement financial assurance is not provided within the time required, all mining shall cease until such time a replacement financial assurance is provided.
 - (c) Any interest from the financial assurance shall be paid to the operator.
- (8) Certification of Completion and Release.
 - (a) The operator shall notify the regulatory authority by filing a notice of completion at the time that the operator believes that reclamation of the nonmetallic mining site or any portion thereof is complete as required under the approved reclamation plan.
 - (b) Manitowoc County shall inspect the site or portion thereof as described in the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan.
 - (c) Manitowoc County shall make a determination within 60 days of receipt of the notice of completion that:
 - 1. Reclamation is fully completed for the entire site;
 - 2. Reclamation is completed for a part of the site;
 - 3. Reclamation is not yet complete; or
 - 4. It is not possible to assess whether reclamation is complete due to weather condition, snow cover, or other relevant factors.
 - (d) Upon determining that reclamation has been completed for the entire site or any portion thereof as required under the approved reclamation plan, Manitowoc County shall issue a certificate of completion and shall release all or part of the financial assurance, as Manitowoc County deems appropriate.
- (9) Forfeiture. Financial assurance shall be forfeited if a permit is revoked and the appeals process has been completed; if a 90-day notice of cancellation of financial assurance is given and the operator fails to deliver a replacement proof of financial assurance within 60 days of such notice; or if an operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.

- (10) Bankruptcy Notification. The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail within 10 days of commencement of voluntary or involuntary proceedings under the United States bankruptcy code in which the operator is named as debtor.

21.26 Public Notice and Right of Hearing.

- (1) Public Notice.
 - (a) Except as provided in sub. (3) and (4), when Manitowoc County receives an application for a reclamation permit, it shall publish a public notice of the application no later than 30 days after receipt of a complete application.
 - (b) The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a class 2 notice pursuant to Wis. Stat. § 985.07(2) in the official newspaper of Manitowoc County. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the location at which the public may review the application and all supporting materials including the reclamation plan.
 - (c) Manitowoc County shall forward a copy of the notice to the Town in which the nonmetallic mining operation is to take place, the owners of the property, and the property owners within 300 feet of the proposed operation.
- (2) Hearing. Except as provided in sub. (3) and (4), Manitowoc County shall provide an opportunity for a hearing on an application or request to issue a nonmetallic mining reclamation permit and shall take and consider reclamation-related testimony.
- (3) Existing Mines. No public notice or hearing is required for a nonmetallic mining reclamation permit issued for an existing mine with a valid permit.
- (4) Local Transportation-Related Mines. No public notice or hearing is required for a nonmetallic mining reclamation permit issued for a local transportation-related mine.

21.27 Nonmetallic Mining Reclamation Permit.

- (1) Permit Required. Except for nonmetallic mining sites that are exempt from this chapter under sec. 21.07, every operator of a nonmetallic mining site in Manitowoc County who engages in nonmetallic mining after September 1, 2001, shall obtain a reclamation permit issued under this section. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1, 2001, without a reclamation permit issued pursuant to this chapter.
- (2) Automatic Permit for Existing Mines.

- (a) Manitowoc County shall, within 30 days of receipt of an application meeting the requirements of sec. 21.22, issue an automatic reclamation permit to the operator of a nonmetallic mining site that submits such an application.
 - (b) Existing mines that are granted a reclamation permit pursuant to this subsection shall, within one year of receipt of the permit and consistent with deadlines established in this chapter, submit a reclamation plan that meets the requirements of sec. 21.24 and financial assurance that meets the requirements of sec. 21.25. Manitowoc County may grant reasonable extensions to the deadlines when it finds extenuating circumstances exist.
- (3) Evaluation of Submittals for Existing Mines.
- (a) Mines covered by automatic permits issued under sub. (2) shall submit a reclamation plan in accordance with sec. 21.24 and proof of financial assurance in accordance with sec. 21.25. Manitowoc County may grant, in writing, reasonable extensions to submittal deadlines where extenuating circumstances exist.
 - (b) If Manitowoc County determines that a previously completed document meets some, but not all, of the requirements of this chapter, it shall request such supplemental information as may be necessary to satisfy the reclamation plan requirements of this section. Manitowoc County may, depending upon the nature and extent of the supplemental information requested, require a public hearing on whether to continue the reclamation permit.
 - (c) Within 30 days of receipt of the reclamation plan and evidence of financial assurance, previously completed documents that include a reclamation plan, or requested supplemental information, or a hearing, whichever is later, Manitowoc County shall make a written determination whether to approve the submittal and to approve continuing the nonmetallic mining reclamation permit.
 - (d) A reclamation permit continued pursuant to this section shall be deemed to satisfy the requirements of this chapter without any further action, approval, or submittal.
- (4) Permit Issuance for New Mines.
- (a) Applications for reclamation permits for nonmetallic mining sites not in operation on August 1, 2001, that satisfy sec. 21.23 shall be issued a reclamation permit or otherwise acted on as provided herein.
 - (b) Unless denied pursuant to sec. 21.28, Manitowoc County shall approve in writing a request that satisfies the requirements of sec. 21.23 to issue a nonmetallic mining reclamation permit for a nonmetallic mine where mining

has not yet taken place on or after August 1, 2001, or for an existing nonmetallic mine where mining does not take place on or after August 1, 2001.

- (c) Manitowoc County may not issue an approval without prior or concurrent approval of the reclamation permit subject to conditions in sec. 21.27(6), if appropriate.
 - (d) Unless a public hearing is held, the permit decision shall be made no sooner than 30 days and no later than 90 days following receipt of the completed reclamation permit application and reclamation plan pursuant to this subchapter. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to sec. 21.27(6), if appropriate, or shall deny the permit within 60 working days after the public hearing is completed.
 - (e) permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of sec. 21.24 and the provision of financial assurance in accordance with sec. 21.25 prior to beginning mining.
- (5) Automatic Permit for Local Transportation-Related Mines.
- (a) Manitowoc County shall automatically issue an expedited permit under this subsection to any borrow site that:
 - 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 gravel, sand, soil, or stone for the construction, reconstruction, maintenance, or repair of an airport, highway, railroad, or other transportation facility under contract with the municipality;
 - 3. Is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;
 - 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 sec. 21.07.

- (b) In this subsection, “municipality” has the meaning defined in Wis. Stat. § 299.01(8).
 - (c) The applicant for an automatic permit under this section shall notify Manitowoc County of the terms and conditions of the contract with respect to reclamation of the proposed borrow site and shall provide evidence to Manitowoc County that the borrow site and its reclamation will comply with applicable zoning requirements, if any.
 - (d) Manitowoc County shall accept contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under sec. 21.24 and shall accept the contractual provisions in lieu of the financial assurance requirements under sec. 21.25.
 - (e) The public notice and hearing provisions do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.
 - (f) Mines permitted under this subsection shall pay an annual fee to Manitowoc County as provided in sec. 21.38, but shall not be subject to the plan review fee provided in sec. 21.37.
 - (g) Manitowoc County shall issue the automatic permit within 7 days of the receipt of a completed application.
 - (h) If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with Wisconsin Department of Transportation requirements.
 - (i) Notwithstanding sec. 21.36, 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.
- (6) Permit Conditions.
- (a) Manitowoc County may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if necessary to assure compliance with the nonmetallic mining reclamation requirements of this chapter.
 - (b) A new mine shall, as a condition of any permit, provide the required financial assurance prior to beginning mining.

21.28 Permit Denial.

- (1) An application for a nonmetallic mining reclamation permit shall be denied if Manitowoc County finds any of the following:
 - (a) The applicant has, after being given an opportunity to make corrections, failed to provide to Manitowoc County an adequate permit application, reclamation plan, financial assurance, or any other submittal required by Wis. Admin. Code Ch. NR 135 or this chapter.
 - (b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standard contained in Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, or this chapter.
 - (c) 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 factors may be considered in determining whether there is a pattern of serious violations:
 - (a) Results of judicial or administrative proceedings involving the operator or its agent, principal, or predecessor.
 - (b) Suspensions or a revocation of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances. Wis. Admin. Code Ch. NR 135.
 - (c) Forfeitures of financial assurance.
- (3) A denial under this subsection shall be in writing and shall state the reasons for denial.
- (4) A decision to deny an application to issue a reclamation permit may be reviewed under sec. 21.35.

21.29 Alternative Requirements.

- (1) An operator of a nonmetallic mining site may request an alternative requirement by submitting a written request to the Manitowoc County Board of Adjustment. The request for an alternative requirement may be included in an application to issue or modify a nonmetallic mining reclamation permit.

- (2) Manitowoc County may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and Manitowoc County 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 that requires an alternative requirement.
 - (b) An unnecessary hardship peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.
 - (c) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long-term site stability in a manner that will not cause environmental pollution or threaten public health, safety, or welfare.
- (3) The operator of a nonmetallic mining site requesting an alternative requirement shall demonstrate that it meets all the criteria contained in sec. 21.29(2).
- (4) The Board of Adjustment shall issue a written decision on a request for alternative reclamation requirements to the applicant. The decision shall state the reason why the request was approved or denied.
- (5) Manitowoc County shall provide written notice to the Department at least 10 days prior to any hearing held under sec. 21.29(2) on a request for an alternative requirement. A copy of any written decision on alternative requirements shall be provided to the Department within 10 days of issuance.

21.30 Permit Duration.

A nonmetallic mining reclamation permit issued under this chapter shall continue in effect during the operation and reclamation of the nonmetallic mining site unless suspended or revoked.

21.31 Permit Transfer.

- (1) A nonmetallic mining reclamation permit issued under this chapter may be transferred to a new operator or owner, subject to the approval of Manitowoc County, upon written request.
- (2) The operator or owner to whom the permit is to be transferred shall provide Manitowoc County with proof of financial assurance and written certification that the new operator or owner will comply with all conditions of the permit.

- (3) The operator or owner from whom the permit is to be transferred shall maintain financial assurance until Manitowoc County has approved the transfer.
- (4) Manitowoc County shall approve a request for a permit transfer only upon receipt of financial assurance from the proposed permit holder and finding that the new permit holder will comply with all conditions of the permit. Manitowoc County shall approve or deny any request for a permit transfer in writing stating the reason for its approval or denial.

21.32 Previously Permitted Sites.

For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Wis. Admin. Code Ch. NR 135 that becomes subject to reclamation permitting authority of Manitowoc County, the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by Manitowoc County pursuant to sec. 21.33.

PART IV. ADMINISTRATION.

21.33 Permit Modification.

- (1) Manitowoc County may issue an order modifying a nonmetallic mining reclamation permit issued under this chapter if it finds that there has been a change in conditions and that the nonmetallic mining site is no longer in compliance with Wis. Admin. Code Ch. NR 135 or this chapter. The order may require that an operator submit an additional, new, or revised application, proof of financial assurance, reclamation plan, or such other information as may be necessary to ensure compliance with Wis. Admin. Code Ch. NR 135 or this chapter.
- (2) The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter may submit a written request for modification of the permit to the Manitowoc County Planning and Park Commission if the operator desires to modify the permit or the approved reclamation plan. The request for permit or plan modification shall be acted upon using the standards and procedures specified in this chapter.
- (3) The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall submit a written request for modification of the permit to the Manitowoc County Planning and Park Commission if there are any changes to the area to be mined, the nature of the planned reclamation, or any other aspect of mining required by the approved reclamation plan. Such application for permit modification shall be acted on using the standards and procedures specified in this chapter.

21.34 Permit Suspension and Revocation.

- (1) Grounds. Manitowoc County may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds the operator has done any of the following:
 - (a) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
 - (b) Failed to submit or maintain financial assurance as required by this chapter.
 - (c) Failed to follow the approved reclamation plan.
- (2) Procedure. If Manitowoc County finds grounds to revoke or suspend a nonmetallic mining reclamation permit, it may issue a special order revoking the permit or suspending it for up to 30 days.
- (3) During suspension, an operator shall not conduct nonmetallic mining or any other activity at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority.
- (4) Upon revocation, an operator shall terminate all nonmetallic mining at the site, except for measures to protect human health and the environment as ordered by the regulatory authority. Additionally, the operator shall forfeit the financial assurance provided pursuant to this chapter to Manitowoc County. The county may use the forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and any applicable reclamation ordinance, with any monies remaining to be paid into the County's general fund.

21.35 Review.

Notwithstanding Wis. Stat. §§ 68.001, 68.03(8) and (9), 68.06, and 68.10(1)(b), any person who meets the requirements of Wis. Stat. § 227.42(1) may obtain a hearing on administrative appeal under Wis. Stat. § 68.11 on Manitowoc County's decision to issue, deny, or modify a nonmetallic mining reclamation permit by providing proper notice of appeal.

21.36 Annual Operator Reporting.

- (1) Contents. The operator on nonmetallic mining sites shall submit annual reports that 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 and tax key number or parcel identification number, if available.
 - (c) The identification number of the applicable nonmetallic mining permit, if assigned by Manitowoc County.
 - (d) The amount of acreage that has been reclaimed to date on a permanent basis and the amount reclaimed on an interim basis.
 - (e) The amount of acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
 - (f) A plan, map, or diagram accurately showing the acreage described in subs. (d) and (e).
 - (g) A written certification, signed by the operator, stating: "I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Wis. Admin. Code Ch. NR 135."
- (2) **Deadline.** The annual report shall cover activities during the calendar year and be submitted within 60 days following the end of the calendar year.
- (3) **Reporting Period.** The operator of any active or intermittent nonmetallic mining site in Manitowoc County shall submit annual reports until nonmetallic mining reclamation at the site is certified as complete pursuant to sec. 21.40 or until release of financial assurance pursuant to sec. 21.25, whichever is later.
- (4) **Inspection in Lieu of Report.** Manitowoc County may, at its sole discretion, obtain the information required to be included in the annual report by completing an inspection and preparing a written report of the inspection during the calendar year. If Manitowoc County determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least 30 days before the end of the applicable calendar year that the operator is not required to submit an annual report but is required to submit the certification required in sub. (1)g.
- (5) **Retention of Reports.** Annual reports or written inspection reports shall be retained by Manitowoc County at the offices of the Manitowoc County Planning and Park Commission for at least 10 years after the calendar year to which they apply. These reports, or true and correct copies thereof, shall be made available to the Department upon written request or during inspection or audit activities carried out pursuant to Wis. Admin. Code Ch. 135.

21.37 Review Fees.

- (1) Plan Review Fee. Any person who submits a permit application under sec. 21.23 shall pay a non-refundable plan review fee. No plan review fee shall be required for an application for an automatic reclamation permit for an existing nonmetallic mining site or for an automatic permit for a local transportation-related mining site.
- (2) Modification Review Fee. Any person who submits a request to modify an existing reclamation plan shall pay a non-refundable modification review fee.

21.38 Annual Fees.

- (1) The operator of a nonmetallic mining site subject to a reclamation permit issued under this chapter shall pay an annual fee to Manitowoc County that is based on the unreclaimed acres at the nonmetallic mining site on July 1 of each year, except that the annual fee for the first year for any new or reopened mine shall be based on the unreclaimed acres that are anticipated at the end of that calendar year.
- (2) The annual fee shall be paid on or before September 1 of each year, except that the fee for the first year of a new or reopened mine shall be paid at the time a permit application is filed.
- (3) The annual fee shall be paid for each calendar year in which nonmetallic mining takes place and shall continue to be paid for each subsequent year until final reclamation is certified as complete.
- (4) The annual fee shall be comprised of a Manitowoc County fee as specified in the planning and zoning department fee schedule and a Wisconsin Department of Natural Resources fee as specified in Wis. Admin. Code § NR 135.39(3).
- (5) If reclamation has occurred on portions of a nonmetallic mining site but has not been certified at the time the annual fee is due, the person paying the fee may request in writing that the fee or a portion of the fee be retained by Manitowoc County pending certification of completed reclamation. Upon such certification Manitowoc County shall refund such portion of the annual fee as may be appropriate.

21.39 Regulatory Reporting and Documentation.

- (1) Reporting. Manitowoc County shall submit an annual report to the Department by March 31 of each year. The report shall include the following information for the previous year's nonmetallic mining reclamation program:
 - (a) The total number of nonmetallic mining reclamation permits in effect.

- (b) The number of new permits issued within the jurisdiction of Manitowoc County.
 - (c) The total number of acres approved for nonmetallic mining.
 - (d) The number of new acres approved for nonmetallic mining.
 - (e) The number of acres being mined.
 - (f) The number of acres that have been reclaimed and have had financial assurance released.
 - (g) The number of acres that have been reclaimed and awaiting release from financial assurance requirements.
 - (h) The number and nature of public hearings, alternative requirements granted, permit modifications, violations, enforcement actions, penalties assessed, and bond or financial assurance forfeitures.
- (2) Documentation. Manitowoc County shall, to the best of its ability, maintain the following information and make it available to the Department for that agency's audit of Manitowoc County's reclamation program pursuant to Wis. Admin. Code Ch. NR 135:
- (a) Documentation of compliance with Wis. Admin. Code Ch. NR 135 and this chapter.
 - (b) Procedures employed by Manitowoc County regarding reclamation plan review and the issuance and modification of permits.
 - (c) Methods for review of annual reports received from operators.
 - (d) 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) Method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.
 - (i) Maintenance and availability of records.

- (j) Number and type of approvals for alternative requirements granted.
- (k) Method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and releasing financial assurance.
- (l) Any changes in local funding, staffing, ordinances, or regulations or any other factor that affects the ability of Manitowoc County to implement its nonmetallic mining reclamation program under this chapter.
- (m) Amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.
- (n) Any other performance criterion Manitowoc County deems necessary to ascertain compliance with Wis. Admin. Code Ch. NR 135.

21.40 Reporting, Certification, and Effect of Reclamation.

- (1) Reporting. The operator of a nonmetallic mining site may report reclamation or interim reclamation as specified in the approved reclamation plan for all or a portion of a nonmetallic mining site.
- (2) Inspection. Manitowoc County shall inspect any nonmetallic mining site within 60 days of receipt of a report of reclamation or interim reclamation.
- (3) Determination and Certification. Manitowoc County shall issue and make a determination in writing in accordance with sec. 21.25(8). If Manitowoc County determines that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with sec. 21.24, Manitowoc County shall issue the operator a written certificate of completion.
- (4) Effect of Certification. If reclamation is certified by Manitowoc County as complete for all or part of a nonmetallic mining site, then:
 - (a) No fee shall be assessed under sec. 21.38 for the area so certified.
 - (b) The financial assurance required by sec. 21.25 shall be released or appropriately reduced in the case of completion of reclamation of a portion of the mining site.

21.41 Permit Termination.

When all final reclamation required by a reclamation plan conforming to sec. 21.24 and required by this chapter is certified as complete, Manitowoc County shall issue a written statement to the operator of the nonmetallic mining site terminating the reclamation permit.

PART V. ENFORCEMENT.

21.42 Violations.

A violation of this chapter, an order or permit issued pursuant to this chapter, or a reclamation plan required by sec. 21.24 and a permit issued under this chapter shall be deemed a violation of Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. NR 135.

21.43 Right of Entry and Inspection.

- (1) Manitowoc County may inspect any nonmetallic mining site subject to this chapter for the purpose of ascertaining compliance with the provisions of Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, or this chapter.
- (2) No person may refuse access to a nonmetallic mining site or to records relating to a site by an authorized employee, officer, or representative of Manitowoc County or the Department for the purpose of inspecting the site for compliance with the nonmetallic mining reclamation permit, Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, or this chapter.
- (3) Any person who enters a site pursuant to this section shall obtain such training and use such safety equipment as may be necessary to comply with any federal, state, or local law, regulation, rule, or ordinance applicable to persons on the nonmetallic mining site.

21.44 Orders.

Manitowoc County may issue orders as set forth in Wis. Stat. § 295.19(1)(a) to enforce Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. NR 135, this chapter, a permit issued pursuant to this chapter, or a reclamation plan required by sec. 21.24 and a permit issued under this chapter.

21.45 Special Orders.

Manitowoc County may issue special orders as set forth in Wis. Stat. §§ 295.19(1)(b) and (c) suspending or revoking a nonmetallic mining reclamation permit or directing an operator to immediately cease an activity regulated under Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, or this chapter until the necessary plan approval is obtained.

21.46 Review of Orders.

Notwithstanding Wis. Stat. §§ 68.001, 68.03(8) and (9), 68.06, and 68.10(1)(b), any person holding a reclamation permit who is subject to an order pursuant to this section may obtain a hearing on administrative appeal under Wis. Stat. § 68.11 with respect to the order by providing proper notice of appeal.

21.47 Citations.

Manitowoc County may issue citations pursuant to Wis. Stat. § 66.119(1) and Manitowoc County Code § 6.02 for violations of this chapter, a permit issued pursuant to this chapter, or a reclamation plan required by sec. 21.24 and a permit issued under this chapter, Wis. Stat. Ch. 295, subch. I, and Wis. Admin. Code Ch. NR 135. The issuance of a citation under this subsection shall not preclude proceeding under any other ordinance or law relating to the same or any other matter, and the issuance of a citation under this subsection shall not be precluded by proceedings under any other ordinance or law relating to the same or any other matter.

21.48 Enforcement.

Manitowoc County may refer any order issued to abate violations of this chapter to a district attorney, corporation counsel, municipal attorney, or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney, or the attorney general may enforce those orders.

21.49 Penalties.

- (1) Any violation of Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, this chapter, a permit issued pursuant to this chapter, or a reclamation plan required by sec. 21.24 and a permit issued under this chapter may result in forfeitures as provided in Wis. Stat. § 295.19(3).
- (2) Any person who violates Wis. Admin. Code Ch. NR 135 or an order issued under sec. 21.44 shall forfeit not less than \$25 nor more than \$1,000 for each violation. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. No penalty shall accrue during the period that an order issued under sec. 21.31 is enjoined, stayed, or suspended.
- (3) Except as provided in sub. (2), any person who violates Wis. Stat. Ch. 295, subch. I, Wis. Admin. Code Ch. NR 135, any approved reclamation plan, or an order issued pursuant to sec. 21.44 shall forfeit not less than \$10 nor more than \$5,000 for each violation. A separate offense shall be deemed committed on each day during or on

which a violation occurs or continues. No penalty shall accrue during the period that an order issued under sec. 21.44 is enjoined, stayed, or suspended.

HISTORY

06/19/2001: Created by Ord. No. 2001/2002-50 effective June 27, 2001.

02/26/2013: Sec. 21.06(1) and 21.07 amended and sec. 21.07(13) created by Ord. No. 2012/2013-86 effective March 8, 2013.

05/21/2013: Secs. 21.37(1), 21.37(2), and 21.38(4) amended by Ord. No. 2013/2014-25 effective August 1, 2013.