



WAUPACA COUNTY
NON-METALLIC MINING ORDINANCE

CHAPTER 38

Creation of Chapter 38 of the General Code of Ordinances, Nonmetallic Mining Ordinance. Created and enacted by the Waupaca County Board of Supervisors on May 19, 2015. Published and effective as of May 28, 2015.

Be it known, that the Waupaca County Board of Supervisors enacted amendments to the Waupaca County Non-Metallic Mining Ordinance, Chapter 38 of the Waupaca County General Code of Ordinances on June 16, 2020. Effective upon publication of June 25, 2020.

Waupaca County Non-Metallic Mining Ordinance

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Part I General

- 1 **Title.** This ordinance shall be cited as the Waupaca County Nonmetallic Mining Ordinance and referred to herein as “this Ordinance”.
 - 2 **Preamble and Findings.** Nonmetallic Mining constitutes a legitimate and permissible activity in the State’s economy and, when performed responsibly, has the potential to beneficially impact County residents, natural areas and economics. Nonmetallic Mining may provide employment opportunities, needed construction, industrial and road-building materials and significant economic benefits to local communities. However, Nonmetallic Mining is not appropriate in all land use designations and, therefore, is regulated herein in accordance with county procedures for conditional use permits.
 - 3 **Statutory Authority.** This Ordinance is adopted under authority of the Wisconsin Statutes including, without limitation, Secs. 59.51, 59.69, 295.12(1)(a) and Wisconsin Administrative Code, sec. NR 135.32.
 - 4 **Effective Date.** The provisions of this Ordinance shall take effect upon proper adoption by the County Board of Waupaca County with an effective date of May 28, 2015.
 - 5 **Intent, Purpose and Objectives.** The purpose of this Ordinance is to establish a County Ordinance which systematically considers nonmetallic mining permit applications, and promotes the health, safety, prosperity, and general welfare of the people and communities of Waupaca County. The general intent of this Ordinance is to regulate the location, construction, installation, alteration, design, operation, and use of all Nonmetallic Mining Sites while considering the appropriate conservation, land and water resources objectives of the County. The objectives of this ordinance are to set forth rules and procedures to govern all aspects of Nonmetallic Mining within the County, establish procedures for the administration and enforcement of this Ordinance, and provide penalties for its violation. This Ordinance shall supplement the existing procedures set forth in Chap. 34 (Waupaca County Zoning Ordinance). In the event a specific process, procedure, standard or requirement in this Ordinance is different from or in conflict with Chapter 34 (Waupaca County Zoning Ordinance), this Ordinance shall control.
- 6 Applicability**
- 6.1 The requirements of this Ordinance apply to any and all operators of Nonmetallic Mining Sites within Waupaca County whose Conditional Use Permit application has not been approved prior to the Effective Date and any existing mines that are legal nonconforming, unless an operator is exempt from regulation in accordance with Section 12 of this Ordinance. The Planning and Zoning Director may waive portions of the specified information request associated with the permit application process if in the Director’s opinion it is determined that, because of the nature or

method of the operation, such information is not relevant or is unnecessary to a full and proper evaluation of the application. The Director shall provide notice to the Committee no later than at the public hearing on the permit application regarding what information has been waived by the Director. The Committee, in its discretion, may demand an applicant provide any application information requested that was waived by the Planning and Zoning Director.

- 6.2 An operator subject to Nonmetallic Mining and Reclamation ordinances of a municipality within Waupaca County is not required to comply with this Ordinance unless that municipality has adopted County zoning provided, however, that the Applicant is required to comply with Chapter 43 of the Waupaca County Ordinances (Reclamation) in its entirety if the specific municipality does not have an approved Reclamation Ordinance consistent with Wis. Adm. Code Ch. NR 135.

7 Definitions

- 7.1 For the purposes of this Ordinance, unless specifically modified in this Section 7, all definitions contained in Wis. Admin. Code Ch. NR 135 are adopted herein. It is the intent of this Ordinance to apply common meanings to common terms that are used in this Ordinance and Wis. Admin. Code Ch. NR 135.
- 7.2 **Active Mine Site and Active Mine Boundary:** The expression upon the land surface of a more or less continuous series of points that when taken together enclose all activities and operations that occur at the mine site on a daily or weekly basis, together with all structures, processing areas, facilities, parking areas and interior haul roads that are integral to or directly serve the mining operation and all stockpiles, waste piles, settling ponds, retention ponds, detention ponds, and lay-down areas that are utilized by the mining operation.
- 7.3 **Applicant:** A person who has applied for a Nonmetallic Mining permit under this Ordinance.
- 7.4 **Application:** The application form, fees, information and any materials required to be submitted in accordance with this Ordinance. The Application is the basis for a permit decision by the Committee.
- 7.5 **Board:** The Waupaca County Board of Adjustment.
- 7.6 **Committee:** The Waupaca County Planning and Zoning Committee.
- 7.7 **Discontinued Use:** A property associated with a Non-Metallic Mining Site that at one time was an active Non-Metallic Mining Site, but has not paid the annual NR 135 operator fee by March 31st of any year.
- 7.8 **Enlargement:** Any increase in dimensions beyond the terms of the original permit.

- 7.9 **Exploratory Boring:** An excavation or opening deeper than it is wide that extends more than ten (10) feet below the ground surface for the purpose of obtaining information on the physical, chemical, radiological or biological characteristics of geological formations or depth to groundwater, excluding any drill holes regulated by Wis. Admin. Code Ch. NR 141.25.
- 7.10 **Compliance.** Unless otherwise defined, Compliance means the Operator maintains legal authority to operate under required permits and safety guidelines issued and/or overseen by local, state or federal issuing or regulatory authorities. State or federal regulatory authorities shall exclusively determine the Operator's Compliance, unless the permit or regulation has been exclusively established by the County, in which case the County shall determine Operator's Compliance.
- 7.11 **Floodplain:** That land which has been or may be covered by flood water during a regional flood regardless of the length of time the area holds the flood. It includes the floodway, flood fringe, shallow depth flooding, flood storage, and coastal floodplain areas. Other relevant and related terms have the definitions established by Wis. Adm. Code Ch. NR 116.
- 7.12 **Hazardous Materials:** Any substance or combination of substances regulated as a "hazardous material" as that term is defined in state and federal law.
- 7.13 **Based on the Life of the Mine:** With respect to all un-reclaimed lands that are part of the mine site, the time period beginning at mine permit issuance and extending through the day on which the land is restored in accordance with the approved reclamation plan and all associated costs to be borne by the mine or mine Operator and payable in fulfillment of the mine permit and reclamation plan have been paid in full.
- 7.14 **Permit:** The Nonmetallic Mining Permit subject to the requirements of this Ordinance.
- 7.15 **Modification:** Any change or amendment to the original permit or conditions required under the permit whether requested by the Operator and approved by the County or determined by the County to be necessary.
- 7.16 **Native Plant Species:** One that is indigenous in a particular region, state, ecosystem and habitat without direct or indirect human activity.
- 7.17 **Nonmetallic Mining:** All of the activities, processes, operations and all other actions described under Wisconsin Admin. Code Sec. NR 135.03(13) that occur on a Nonmetallic Mining Site or Site.
- 7.18 **Nonmetallic Mining Structures:** Any buildings, facilities, permanent equipment or framework that is located on the Site. It includes, but is not limited to, mining and

processing equipment, storage facilities and improvements, mechanical shops, paved parking surfaces and office space.

- 7.19 **Nonmetallic Mining Waste:** The non-marketable materials removed from the land prior to or during the Nonmetallic Mining process including an industrial sand mining process. It includes waste soil, rock, mineral, sand and all other materials, including but not limited to flocculants, that results directly from the operator's Nonmetallic Mining, and that is designated for disposal at the operator's designated Nonmetallic Mining site or elsewhere as authorized by the operator's licenses, permits, approvals and reclamation plan.
- 7.20 **Nonmetallic Mining Site or Site:** All of the areas defined by Wisconsin Admin. Code Sec. NR 135.03(16)(a).
- 7.21 **Nonmetallic Mining Reclamation Plan** has the meaning and incorporates the requirements established by NR 135.
- 7.22 **Registered or Licensed Professional:** A person who is licensed as a professional pursuant to Wis. State Statute or Wis. Admin. Code.
- 7.23 **Significant subsidence:** Any cave ins, sinkholes, depressions, or settling of the surface or mine sides that will likely result in Stormwater Pollution Prevention Plan (SWPPP) violations or run-off, mudslides or releases to neighboring properties associated with a Nonmetallic Mining Site under this Ordinance.
- 7.24 **State Natural Area:** Has the meaning set forth in Wis. Stat. 23.27.
- 7.25 **Wetland:** Has the meaning established by Wisconsin State law: An area where water is at, near, or above the land surface long enough to be capable of supporting hydrophytic vegetation and which has soils indicative of wet conditions.
- 8 **Severability.** Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.
- 9 **Restrictions Imposed Under Other Authority.** The purpose of this Ordinance is to establish a County program for Nonmetallic Mining permitting in accordance with state law, including but not limited to, Wisconsin Administrative Code Chs. NR 135 and NR 340. This Ordinance is not intended to repeal, abrogate, annul, impair or interfere with any existing laws, regulations, ordinances, rules, standards or permits that are not specific to Nonmetallic Mining previously adopted pursuant to other Wisconsin law. This Ordinance does not repeal, abrogate, annul, impair, limit or interfere with any existing requirements under Chapter 43 (Waupaca County Non-Metallic Mining Reclamation Ordinance). In the event of a conflict between this Ordinance and Chapter 43, Chapter 43 shall control. In the event a specific process, procedure, standard or requirement in this Ordinance is different from or in

conflict with Chapter 34 (Waupaca County Zoning Ordinance), this Ordinance shall control.

- 10 **Interpretation.** In both interpretation and application, this Ordinance shall be held to be the applicable requirements for Nonmetallic Mining in Waupaca County and shall not be considered a limitation or repeal of any other power granted by Wisconsin Statutes. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation of this Ordinance shall apply. Where a provision of this Ordinance is specifically required to comply with Wisconsin Statutes Sec. 295, or environmental standards of Wisconsin Statutes, or Wisconsin Administrative Code Chapter NR 135 or environmental regulations, and where the provision is deemed to be unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and Wisconsin Administrative Code requirements.
- 11 **Limitation of Action Challenging Validity of Ordinance.** Pursuant to Wisconsin Statutes Sec. 59.69(14), a land owner, occupant, County citizen or other person impacted by this Ordinance or any potential future amendment hereto, who claims that this Ordinance or its amendment is invalid because procedures prescribed by the statutes or other ordinance were not followed must commence a court action within six (6) months after adoption of this Ordinance or forever be barred from asserting such a claim.
- 12 **Exemptions.** The Ordinance does not apply to:
 - 12.1 The exempt activities listed in Wisconsin Administrative Code NR 135.02(3)
 - 12.2 Any excavation, construction, dredging or enlargement subject to a permit under the requirements of Wis. Stat. Ch. 30 when the activity is not for the purpose of Nonmetallic Mining. However, should a Nonmetallic Mining Operation require a Chapter 30 permit this exemption shall not apply.
 - 12.3 Any excavation required pursuant to an order from a regulatory authority to abate environmental pollution.
 - 12.4 This Ordinance does not apply to the lawful use of a building, structure or lot for Nonmetallic Mining Operations which existed at the time this Ordinance, or an applicable amendment to this Ordinance, took effect and which is not in conformity with the provisions of this Ordinance, subject to the following conditions:
 - 12.4.1 If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this Ordinance.
 - 12.5 A legal nonconforming mine operating in accord with the common law diminishing asset rule.

12.6 In the event the County or a town within the County has prior to the effective date of this Ordinance entered into a local agreement to which the County or town is a party, including a development agreement or road agreement, that addresses Nonmetallic Mining activities, Nonmetallic Mining shall be permitted pursuant to the terms of the local agreement until such time that all activities under the local agreement are discontinued for a period of at least twelve (12) consecutive months.

13 Registration

13.1 Wisconsin Admin. Code Ch. NR 135 allows landowners to register land which contains economically viable Nonmetallic Mineral deposits. All registrations must comply with the requirements of NR 135 subchapter VI.

Part II Nonmetallic Mining Standards

14 Permits Required

14.1 **Conditional Use Permit Required.** Nonmetallic Mining is authorized pursuant to a Conditional Use Permit.

14.2 **Reclamation Permit Required.** Nonmetallic Mining Reclamation is authorized pursuant to a permit applied for and obtained in accordance with the requirements of Wis. Admin. Code Ch. NR 135 and Chapter 43 of the Waupaca County Nonmetallic Mining Ordinance. All Applicants intending to operate a Nonmetallic Mining Site subject to the review and permit requirements of this Ordinance must follow applicable Waupaca County reclamation requirements.

15 Prohibitions

15.1 Nonmetallic Mining is prohibited in all zoning districts other than Agricultural Enterprise (AE), Agricultural Retention (AR), Private Recreation and Forestry (PVRF), Agriculture and Woodland Transition (AWT), Rural Industrial-General (RI-G) and Rural Industrial-Intensive (RI-I).

15.2 Nonmetallic Mining activities are prohibited within any of the following described areas unless it can be demonstrated that the activities will not have an adverse impact upon the described area. The areas include both the above-ground portion and the underground portion extending vertically from the site boundaries within the specified setback areas.

(1) Within one hundred fifty (150) feet of any State Natural Area.

(2) Within a floodplain.

16 Setbacks

- 16.1 The setbacks in this section shall apply to all Nonmetallic Mining activity including, without limitation, the storage of waste materials, stockpiling, inventory, and equipment. The setback requirements do not apply to berms or other methods of landscape screening.
- 16.2 Where berms or screening of any kind is deemed unnecessary, the active Nonmetallic Mining operation shall be located at least fifty (50) feet from all exterior lot lines.
- 16.3 The active Nonmetallic Mining operation shall be located at least one hundred fifty (150) feet from public road centerline or one hundred (100) feet from the road right-of-way, whichever is greater. Adjoining Nonmetallic Mining operations are not subject to the exterior lot line setback for the lot line that is shared by those operations, if agreed to by the adjoining landowner or operator. This written agreement shall be recorded with the Register of Deeds as a deed restriction.
- 16.4 No active Nonmetallic Mining operation shall be conducted within five hundred (500) feet of a dwelling unit, commercial structure, or active farm building other than that of the owner or operator unless a written agreement with the adjacent landowner is approved by the Planning and Zoning Committee. This written agreement shall be recorded with the Register of Deeds as a deed restriction. This setback may also be increased depending on the size and scope of the mining operation on a case by case basis at the discretion of the Planning and Zoning Committee.
- 16.5 No active Nonmetallic Mining operation shall be conducted within thirteen hundred twenty (1320) feet of a recorded State or County Subdivision Plat.
- 16.6 The Planning & Zoning Committee may authorize berm construction to within twenty-five (25) feet of any exterior boundary of the tract.

17 Compliance with all County, Local, State and Federal Legal Requirements

- 17.1 The Operator must comply with all local, state and federal laws, permits, regulations, other requirements or obligations and amendments thereof.
- 17.2 Compliance with law includes, but is not limited to building permits, roadway limits, Department of Transportation licensing, blasting and noise standards, environmental, and occupational safety and health requirements.

17.3 Road Agreements. The Operator must comply with Road Agreements from the town and the County highway department for the transportation haul route in conformance with standards and requirements set forth by the town or county in substantial conformance with any Road Agreement.

17.4 Where other County approvals are necessary those approvals shall be incorporated into a permit upon issuance. The Applicant/Operator is responsible for ensuring that the County receives copies of any approval, permit extension, revision and reissuance.

17.5 For operations located within a Farmland Preservation Area, said operation shall also satisfy the requirements of Wis. Stats 91.46 (6).

18 Monitoring

18.1 Operator agrees to conduct monitoring activities, annually or more often if necessary, to ensure compliance with this ordinance and conditions associated with the permit. A checklist will be created using the conditions of the permit to track and archive compliance.

19 Property Protection Safety and General Operating

19.1 **Gating:** The Nonmetallic Mining Site shall be gated and locked during non-operating hours at all site entrances.

19.2 **Lighting:** Lighting shall be limited to that which is minimally necessary for safe mining operations, site accessibility and security. All lighting shall be shielded and pointed downward to avoid illuminating offsite. Nighttime lighting is limited to that reasonably necessary for security purposes, operations consistent with the permit and for any emergency repairs or hour extensions approved by the County.

19.3 **Site Enclosure:** Enclosures shall be installed so as to enclose and control access points and areas along highways, roadways or thoroughfares of the Mining Site. Enclosures may be solid wood slat, metal chain link or other fencing materials; vegetative; or berms.

19.4 **On-site Fuel Storage:** All petroleum products kept onsite and related to the mining operation shall be stored in state approved fuel storage and fueling areas. All petroleum product storage tanks shall provide leak proof containment consistent with applicable state and federal law. Where fueling trucks are used to refuel equipment onsite, all fueling must occur according to applicable state and federal law.

19.5 **Hours of Operation:** Nonmetallic Mining operations shall be limited to reasonable hours consistent with the characteristics of the property and neighborhood surrounding the operations, the impact of the operations on the community and

residents thereof and the Operator's needs. The Nonmetallic Mining site shall only haul, produce and remove nonmetallic material from 6:00 a.m. to 6:00 p.m. Monday - Friday and 8:00 a.m. to 12:00 p.m. on Saturdays and no Sundays or Holidays, unless the Operator applies for and is granted alternate hours of operation as a condition of the conditional use permit. In order to be eligible to receive approval, the operator shall give the zoning office thirty (30) days' notice of a special exception to the granted hours of operation. The use of blasting will only be allowed between the hours of 8:00 a.m. and 4:00 p.m. Monday – Friday, and not on any holidays.

19.6 Hazardous Materials Storage: Hazardous materials shall be stored in compliance with all state, federal and local laws.

19.7 Berms and Screening: Where practical, an earth berm and/or vegetative screen providing adequate screening of the mine site shall be erected and maintained to screen the mine site. The Planning and Zoning Committee shall determine the practicality and necessity of aesthetic screening in each individual mining operation and include it as a permit condition. At a minimum, all mine sites shall comply with the following:

1. A berm shall be constructed along the adjacent road right-of-ways. The use of berms to create a "S" curve on an entrance or exit may be required;
2. The berm shall be at least ten (10) feet above the surface of the center adjacent road right-of-ways;
3. The outward-facing slopes of said berm shall not be steeper than three (3) horizontal units to one (1) vertical unit. The inner-facing slopes may be steeper, but must be stabilized and maintained to remain stable;
4. Prior to construction of said berm, the applicant shall present a detailed berm construction plan to the Planning and Zoning Office for approval. The plan shall include drainage, erosion control, seeding and any landscape features;
5. The berm shall be constructed within fourteen (14) days of stripped overburden and topsoil becoming available from the mine site or from suitable outside sources. The berm may be installed in phases at the discretion of the Planning and Zoning Committee;
6. Only clean overburden from the mining site or suitable outside sources shall be used in constructing the berm;
7. The exterior of the berm shall be kept free of invasive species (as determined by NR 40), trash and debris;
8. Additional fencing, screening or landscaping may be required as deemed necessary.

19.8 Boring holes: The Operator shall maintain compliance with Chapter 281 of the Wisconsin Statutes and NR 141.25 with respect to the abandonment of boreholes and exploratory drilling sites.

20 Insurance

20.1 **Insurance.** The Applicant must provide the County with a certificate of insurance prior to the commencement of any activity at the site. The certificate must demonstrate sufficient levels of insurance, as determined by the Committee, and be in accordance with general industry standards. In addition to any other review rights provided in this Ordinance, the Committee reserves the right to review permits granted under this Ordinance for purposes of evaluating the sufficiency of insurance and may order that the Applicant provide additional levels of insurance as a condition of the continued issuance of the permit.

21 Environmental Protection Standards

21.1 **General Compliance.** The Operator must comply with all applicable local, state and federal environmental protection laws.

21.2 **Air Emissions.** The Operator must comply with all state and federal requirements including but not limited to Wis. Adm. Code Sec. 407, 415, 440 and 445 and ensure proper air permitting.

21.3 **Groundwater.** The Operator must comply with all state and federal requirements intended to regulate groundwater in any manner. The Operator shall comply with relevant requirements of NR 809, 810, 812, 815, 820, 850 and 856 and Wis. Stats. Ch. 280.

21.4 Groundwater Monitoring.

1. The applicant shall send a certified letter, with receipt requested, to all neighboring properties, which have assessed structures in excess of a value of five thousand dollars (\$5,000), which are located within thirteen hundred twenty (1,320) feet of the proposed perimeter of the mining extraction area. The letter shall notify the owner of the owner's right to have a baseline test performed within sixty (60) days of receipt of the letter on the landowner's well. The applicant shall be responsible for all well testing where the property owner has indicated in writing within the sixty (60) day period mentioned that they want to have their well tested and have granted permission for access and testing on the property. Mine operators are strongly encouraged to get written evidence from all property owners that choose not to participate in the baseline testing. Baseline testing shall test for, at a minimum, bacteria, turbidity and drawdown, or any chemicals which are in use by the nonmetallic mine operation. Testing must be completed and results obtained prior to commencing any permitted activity on site. Drawdown tests shall be conducted when requested in writing by a well owner who believes the quantity of water in the well has been impacted by the mining activities. All tests shall be performed by a qualified third party professional. Through baseline testing, if a well is found to be out of

compliance, it must be brought up to code prior to being eligible for the well guarantee program.

- a. Groundwater well guarantee. Mining operations will not adversely affect the quantity or quality of groundwater at off-site properties. If mining operations adversely affect an off-site water-supply well, the operator will repair or replace the well to provide the same quantity of groundwater obtained from the well prior to the mining operations. This guarantee applies to all existing wells located within thirteen hundred twenty (1,320) feet of the nonmetallic mine. The mining operator shall make a reasonable effort to measure the water levels in these wells prior to beginning quarry operations, so that property owners and operators will have a record of baseline conditions if a dispute arises.
2. All test results shall be provided to both the owner and the County within ten (10) days of receipt of the test results. If test results show that the well is not suitable for use as a result of the mining activity, the applicant shall take all reasonable steps to alleviate any problems including, but not limited to, immediately providing a temporary water source, well repair, or code compliant well replacement. In no case shall bottled water be provided as a permanent solution. The applicant shall also be responsible for, at the applicant's option, either repairing the well, drilling a new well or casing a well, which was found compliant and safe at the time the Conditional Use Permit was issued which later revealed turbidity, or drawdown problems as a result of the mining activity. Wells that were not included in the baseline testing, due to the installation date, or an owner indicating a willingness to be exempt from the baseline testing, are not subject to these provisions.
 - a. Any eligible owner claiming an adverse effect on groundwater supply shall provide written notice to the operator and the county, by certified mail, explaining the nature and the extent of the problem. Within thirty (30) days of written notice to the operator, the operator will make a written determination as to whether the groundwater problem was caused by its operations, and, if so caused, the amount of compensation to be provided to the owner. The operator will file its written determination with the County Zoning Director and send a copy by certified mail to the owner. The owner shall have seven (7) days to accept or decline the determination of the operator and any specific amount of compensation.

21.4.1 The owner shall, within thirty (30) days of his election not to accept the operator's determination, make a written determination as to whether the groundwater problem was caused by the operator's operations, and, if so caused, respond with the owner's resolution to the operator with a copy sent to the County Zoning Director. The owner shall file a written determination with the County Zoning Director. The Planning and Zoning Committee shall review the materials submitted by the operator and property owner and may request that the parties attend a meeting to further explain their positions. The Committee shall have no jurisdiction to force a resolution to a dispute under this paragraph and resolution of any dispute shall not impact an operator's permit hereunder unless operator fails to follow the procedures herein.

3. An applicant may install a residential well for use in the Nonmetallic Mining operation. High capacity wells and high capacity well systems, both as defined in Wis. Admin. Code NR 812.07, as amended, shall comply with Wisconsin State Law and Wisconsin Administrative Codes, concerning high capacity well systems.

4. As part of the Conditional Use Permit, the Planning and Zoning Committee may require a qualified person to conduct a hydrologic study of the site if the mining activity will occur below the groundwater level. The study should characterize proposed dewatering effects on on-site and adjacent property water levels (groundwater quantity). On-site water supply wells or nearby private wells completed in the uppermost aquifer may also be used for monitoring purposes. Water levels should be measured in these wells on a quarterly basis for at least three (3) years, and annually thereafter, in order to understand natural seasonal variation in water levels and to be able to differentiate the effects of natural variation from those related to mining operations

21.5 **Surface Waters.** Due to the prevalence of surface waters in Waupaca County it is likely that some applications will be for sites near waterways. The Operator must comply with all state and federal requirements intended to regulate surface waters. Applicants must comply with NR 200 et. seq., NR 135, 140, 299 and 340 requirements, Wis. Stats. Chs. 30, 31, 281 and 283.

21.6 **Wetlands.** The operator must comply with all federal and state requirements related to wetland regulations. Operators must receive proper DNR and US Army Corps of Engineers permits and approvals in accordance with Wis. Stats. Ch. 299, Wis. Adm. Code Chs. 103, 350, 351, 352 and 353 and under Section 404 of the Federal Clean Water Act should its operation require such permits and approvals.

21.7 **Stormwater.** The operator is required to comply with state stormwater permitting requirements. Should the site discharge stormwater off site and/or to surface waters the operator must prepare and implement a Stormwater Pollution

Prevention Plan (SWPPP) and comply with Wis. Stats. Admin. Code Ch. 216 and NR 151.

21.8 **Wastewater Discharges.** The operator is required to comply with all state, federal and local wastewater discharge requirements which may include specifications for wastewater discharge and pit dewatering.

22 Emergency Actions.

22.1 The operator must comply with all state and federal requirements for emergency actions, spills reporting, safety and human health emergencies. For example, the operator must comply with spill reporting requirements and Department of Labor reporting. Relevant legal standards include NR 600 and 700-749 and Wis. Stats. Chs. 291 and 292.

22.2 The operator shall maintain emergency contact information with the County. In the event the County must respond to an emergency at the Site the contact shall be notified as soon as reasonably possible. If the emergency contact is unavailable, the County shall notify the applicant or his/her agent identified on the application materials.

22.3 The County is not responsible for any damage it may cause to the Site in carrying out an emergency response.

23 **Waiver of Liability.** Issuance of a permit in no way creates any Site responsibility for the County. The Operator releases, waives and discharges any liability claims or causes of action against the County related to the issuance of a permit.

24 **Dust and Mud.** The Operator shall utilize appropriate Best Management Practices as specified by Wisconsin DNR. The Planning and Zoning Committee may require additional practices as deemed appropriate.

24.1 The operator shall make every effort to prevent tracking of dust, mud and debris to public roads. The operator will be required to clean up any dust, mud and debris that is tracked on a public road.

24.2 The Planning and Zoning Committee may require the paving of any access onto a public road.

25 Blasting and Logs.

25.1 **Blasting:** All blasting shall be done in compliance with State and Federal guidelines and requirements, including Chap. SPS 307.41 of the Wisconsin Administrative Code. In addition to the regulations on blasting in Section 19.5, blasting hours may be regulated by the conditions placed on the Conditional Use Permit.

25.2 **Blasting Logs:** Blasting logs shall be provided to the County within forty-eight (48) hours, excluding weekends, of a written request from the County. Blasting logs shall include only the date, time and location of any blasting activities.

Part III Permitting

26 **Permit Requirements.** Nonmetallic Mining shall be permitted only as a Conditional Use in accordance with County zoning and only if a permit is obtained pursuant to the requirements of this Ordinance. Any permit obtained under this Ordinance shall be conditioned upon Operator obtaining all other applicable permits pursuant to any other applicable federal law, state law, Section of this Ordinance and the County Code of Ordinances in its entirety. A permit granted under Chapter 38 shall be also be deemed a permit granted under Chapter 34 (Waupaca County Zoning Ordinance). All operators seeking a Conditional Use Permit under this Ordinance shall apply on forms provided by the County and according to the policies of the Zoning Office as applicable to the Conditional Use Permit.

26.1 An application for a Nonmetallic Mining permit shall not be considered under this section unless all other necessary permits, licenses and approvals have been properly applied for in accordance with any applicable local, County, state and federal regulations. Complete regulatory approval applications must be submitted for all applicable local, county, state, federal permits and approvals and to each town in which any part of the proposed Nonmetallic Mine will be located. The Applicant is solely responsible for providing of all required information associated with the Nonmetallic Mining Permit. Any failure to provide information will result in an incomplete application and a process delay.

26.2 **Reclamation Plan:** Chapter 43 Non-Metallic Mining Reclamation Ordinance for Waupaca County must be followed. East Central Wisconsin Regional Planning Commission (ECWRPC) administers the Reclamation Ordinance. Approval of a reclamation plan and issuance of a reclamation permit must be received and placed on file with the County prior to commencement of extraction activities.

26.3 **Permit Application Form:** The Applicant shall complete and submit the application form provided by the Planning & Zoning Office. The application shall include the following:

1. Filing Fees

- a. The Applicant shall submit a fee in accordance with the Waupaca County Planning and Zoning Fee Schedule. The fee is intended to cover the anticipated actual costs of reviewing the Nonmetallic Mining Permit including, without limitation, any reasonable investigative, exploratory, review, analysis or similar activities undertaken by Waupaca County or experts.

2. A Signed and Notarized Statement. The permit application must be complete with all notarized signatures and attachments.

26.4 Operation Plans. The application submitted for a Conditional Use Nonmetallic Mining Permit shall be accompanied by the following information and/or plans reasonably reflecting the best information available at the time of the application:

- 26.4.1 A land survey completed by a land surveyor registered in the State of Wisconsin showing the location of the tract or tracts of land with parcel identification numbers marked, to be included in the proposed mining operation, including the proposed mine boundary.
- 26.4.2 The lateral extent of the proposed mine site at a scale not smaller than six hundred sixty (660) feet to the inch, with the mine site boundaries clearly shown.
- 26.4.3 A topographic map of the property to be affected by the mine operation at contour intervals no greater than ten (10) feet and extending a minimum of one quarter ($\frac{1}{4}$) mile beyond the proposed mine boundary at a scale not smaller than six hundred sixty (660) feet to the inch, with the mine site boundaries clearly shown.
- 26.4.4 A map of all residential, agricultural and municipal wells within one quarter ($\frac{1}{4}$) mile of proposed mine site boundaries.
- 26.4.5 A general location map showing the location of the site vicinity and political boundaries of included towns and the County, including the following:
 1. Names of owners of the tract or tracts of land to be mined and the property owners of the land within one quarter ($\frac{1}{4}$) mile of the Mine Site;
 2. Locate and label all existing buildings within one quarter ($\frac{1}{4}$) mile of the outer perimeter of the mine site;
 3. The location and name of all surface water, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within one quarter ($\frac{1}{4}$) mile of the proposed mine boundaries.
 4. Cross-sections of the proposed nonmetallic mine at intervals of not more than three hundred (300) feet or at interval otherwise approved by the County, but including at least three parallel cross sections and one perpendicular cross section.
 5. A map at a scale of not less than four hundred (400) feet to the inch, showing the proposed sequence of mining, direction of mining, depth of mining, and estimated volumes of material to be removed. The map should also show the following existing or proposed features:
 - a. Stockpiles and storage yards.
 - b. On-site haul roads.

- c. Proposed permanent or temporary structures with their identity marked.
 - d. Location of roadway access points.
 - e. Parking areas.
 - f. Buffer Zone.
 - g. Existing structures.
- 26.4.6 The dates of the proposed commencement and cessation of proposed mine construction and mine operation.
- 26.4.7 An estimated daily water budget that describes all the ways that water will be used in the Nonmetallic Mining operation including, but not limited to: the water required for the entire site whether for mining, human use, dust control or any function; the sources of water and all processes in which the water will be used, methods for treating, handling and disposing of water; volume of water consumed and discharged from the site as run-off, stormwater, dewatering or any other mechanism.
- 26.4.8 A description of all hazardous materials and hazardous wastes as defined by this Ordinance and state and/or federal standards, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing all hazardous materials and hazardous wastes stored on site in accordance with Wis. Stats. Ch. 323.60.
- 26.4.9 A description of the measures that will be used to contain and remediate any spill or accidental discharge in accordance with Wis. Stats. Ch. 323.60.
- 26.4.10 A map of all proposed transportation routes, within the County, to be used to transport the Nonmetallic Mine materials from the mine to off-site processing plants or markets, including the frequency of traffic, type of vehicle used in transport, average loaded weight of vehicle, and the common schedule of travel to be used for transporting.
- 26.4.11 A description of measures to be taken to control noise, dust and vibrations from the operations, along with a statement of the proposed frequency of blasting, if any, to be used in the operation.
- 26.4.12 A description of the mining methods, machinery and equipment to be used for extraction and processing of extracted material.
- 26.4.13 A description of measures to be taken to screen the operation from view with earth banks, vegetative or other screening devices.
- 26.4.14 A lighting plan for the Nonmetallic Mining operation, including the type and style of lighting to be used and its power source.

26.4.15 A description of all fencing, gating and security measures in accordance with Section 19 of this Ordinance.

27 Application Review

27.1 Permit Application Procedures

27.1.1 Ten (10) hard copies and one (1) digital copy of the Application and all required materials shall be submitted in the County Zoning Office.

27.1.2 The Zoning Office will distribute one (1) copy of the Application to each member of the Planning and Zoning Committee, to other County Departments as necessary, to municipalities within five (5) miles of the proposed mine and file several copies for citizen review. Citizen review copies will be retained and made available by the Planning and Zoning Office.

27.1.3 The Zoning Office will forward a copy of the Application to the clerk of the town where the proposed mine is located, or the town chair if that particular town has designated the chair as the receiving party, along with a Town Recommendation Form. The consultation process may vary from town to town, and may involve the Town Plan Commission and/or Town Board. The town shall have forty-five (45) days from the date the application materials and Town Recommendation Form were forwarded by the Zoning Office to provide the Planning and Zoning Committee with a recommendation regarding the Application. After forty-five (45) days, if the affected town has not provided a recommendation to the Committee regarding the Application, and provided the applicant has attempted to meet or has met with representatives of the Town, the Committee shall schedule the public hearing. The Zoning Administrator may, in his or her discretion, extend the deadline for a town to provide its recommendation to the Planning and Zoning Committee.

27.1.4 Factors to be considered. The Committee shall consider the following provisions consistent with Section 14.05(2) of the Waupaca County Zoning Ordinance;

- a. The proposed Conditional Use will be designed, constructed, operated, and maintained so as to be compatible, and be appropriate in appearance with the existing or intended character of the general vicinity, and such use will not change the essential character of the same area such that the use will substantially impair or diminish the use, value, or enjoyment of existing or future permitted uses in the area.
- b. The proposed Conditional Use will be consistent with all relevant aspects of the Town and County Comprehensive Plans.
- c. The proposed Conditional Use will not substantially increase the erosion potential of the site; negatively affect wetlands, floodplains, or water bodies;

or otherwise compromise surface or ground water quality based on topography, drainage, slope, soil type, vegetative cover, means of waste disposal and other relevant factors.

- d. The proposed Conditional Use is located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities, or services provided by public agencies.
- e. The proposed Conditional Use is in a location where access to streets and highways is suitable, and ingress and egress is designed to minimize traffic congestion and the potential effect on traffic flow.

27.1.5 Request for additional information. The County reserves the right to request additional information from the Applicant throughout the review process. Such requests will be in writing. The Applicant shall supply such information with urgency so as not to delay the review and subsequent proceedings. Should the County require additional time for review upon receiving the requested information it shall supply the relevant parties with a revised hearing schedule. This additional review time shall be limited to another thirty (30) days. However, if the Applicant does not respond within a reasonable time frame or supply appropriate and relevant information all time frames shall be suspended until such time as that occurs. The County must then supply a new notice with an adjusted schedule.

27.1.6 County's Ability to Employ Licensed Professionals. The County reserves the right to retain or appoint Licensed Professionals accredited in the field for which the individual is retained and/or legal professionals as it deems prudent to examine the application and to make recommendations to the County on whether the Nonmetallic Mining Operation proposed by the applicant will meet the standards of this Ordinance, to assist in evaluating Conditional Use Permit requests, consider conditions, and to assist the County in administering and enforcing the Ordinance.

27.2 Allowed Time for Review

27.2.1 Allowed Time for Review and Notice. Within thirty (30) days of receiving a Nonmetallic Mining Permit application the County shall determine the completeness of the application. If the application is deemed to be complete the County shall provide notice to the Applicant of the completeness determination. The County shall also provide notice within thirty (30) days of receiving a complete application as required in accordance with Subsection 27.3. A complete Application is one which meets all requirements for a Nonmetallic Mining permit application and the applicable standards of this Ordinance.

27.2.2 If the County determines that the application is not complete it shall notify the Applicant in writing of the deficiencies. The County shall have another thirty (30) days for review and to make a subsequent completeness determination upon receiving the additional materials.

27.2.3 When a completeness determination is made, the County shall include all hearing information in the Notice provided to the Applicant. The information should include the date, time and location of the hearing. The County must schedule the hearing within forty-five (45) days of the completeness determination.

27.3 **Public Notice.** The County shall post notice outside the County land use offices, other relevant offices, and publish a Class 2 notice pursuant to Wis. Stats. 985.07(2) that briefly describes the proposed mine and the material to be mined and states that a completed application is being reviewed by the County, is available at the County zoning offices, or online at <http://www.co.waupaca.wi.us/zoning/Home.aspx> for review and that a hearing will be held on a specific date for consideration of the Application, the mining operation plan and various conditions.

27.3.1 The notice shall be forwarded to all adjacent towns and cities/villages local boards or committees and all landowners within three hundred (300) feet of the site.

27.4 **Public Comments.** During the review period, prior to the public hearing, the County shall accept public comments regarding the project. Comments shall be in writing and submitted to the attention of the Planning and Zoning Office.

27.5 **Public Hearing.** The Committee shall conduct a public hearing to hear testimony on the Nonmetallic Mining Permit application at a date, time, and location specified in the public hearing notice. In the event that the scope, range of uses, or geographic area of the request is substantially increased from that noticed or presented at the public hearing, the Committee shall cause to be noticed and conduct an additional public hearing before taking action on the request. As soon as possible following the final public hearing, the Committee shall approve, conditionally approve, or deny the proposed Conditional Use Permit requested through the application.

27.6 Permit Conditions.

- 27.6.1 The County may impose conditions that include, but are not limited to, restrictive provisions and proof of financial security for county and town road maintenance and repair, restrictions on hours of operation, restrictions on truck routes on town and county roads, restrictions on truck and traffic volume into and out of the mine site, and any other restrictions deemed necessary and appropriate to protect the public health, safety and welfare consistent with state and federal law. The County reserves the right to impose conditions or restrictions that are more stringent than the minimum conditions or restrictions imposed by this Ordinance.
- 27.6.2 Proposed permit conditions shall be published upon the notice of a permit decision. If the County determines that the permit should be issued, it shall provide the permit conditions to the Operator and others who received notice in accordance with Section 27.3.1. Permit conditions shall be reviewed by the operator and the operator shall file a statement that the Operator agrees to comply with all conditions.
- 27.6.3 The Operator must promptly disclose any and all notices received from any other governmental body or regulatory authority wherein Operator is notified that its operations are or may be ordered to be ceased or otherwise materially impacted.

27.7 Application Decision.

- 27.7.1 Decision on Mining Operation Plan. The County shall approve, conditionally approve or deny the Mining Plan and Application submitted in accordance with this Ordinance. Permit Applications that satisfy the requirements of this Ordinance shall be approved or conditionally approved. Any denial shall comply with the requirements of Subsection 27.8. A decision regarding the issuance, denial and conditions of a mining permit shall be made within sixty (60) days of the completion of the hearing required under Subsection 27.5. The decision shall be in writing. The decision does not constitute final action. Upon approval or conditional approval of the Application and Plan, a determination by the County that all necessary fees are paid, and permits have been received, the County shall issue the Conditional Use Permit which shall become immediately effective. The Operator shall retain a copy of the Nonmetallic Mining permit approved under this subsection at the Mining Site, or if not practicable, at the Operator's nearest place of business.

27.7.2 Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of Chapter 43 of Waupaca County Code of Ordinances and provisions by the Applicant of financial assurance required in compliance with the reclamation permit and payable to Waupaca County prior to beginning mining. Nonmetallic Mining shall not be permitted without a valid reclamation permit and necessary financial assurances whether required by this Ordinance or in accordance with the reclamation permit requirements.

27.8 **Permit Denial.** If the review by the County results in a permit denial, the reasons for permit denial shall be supplied in a written statement to the Applicant. Reasons for denial shall be specifically stated and reflect reasoned consideration by the County. Denial shall occur if the Applicant cannot demonstrate compliance with this Ordinance.

27.8.1 Prior to denial, the County shall provide the Applicant with an opportunity to make corrections. If, after this opportunity, the Applicant fails to provide the County with adequate permit applications, reclamation plan, operation plan, financial assurance or any other submittal required by Wis. Admin Code Ch. NR 135, Subchapter I of Wis. Stats. Ch. 295 or this Ordinance, the permit shall be denied.

27.8.2 Denial shall occur if the proposed Nonmetallic Mining Site cannot be reclaimed in compliance with the reclamation standards contained in this Ordinance, Chapter NR 135, Wisconsin Administrative Code or subchapter I. of Wis. Stats. Ch. 295.

27.9 **Appeals Process.** Following any decision made by the Board of Adjustment, the Applicant may appeal in accordance with Wis. Stats. Sec. 59.694(10).

Part IV Administration

28 Mining Permit Modification.

- 28.1 A Nonmetallic Mining permit issued under this Ordinance may be modified in the event that the County determines that circumstances or factors that should have been properly considered when approving the permit were not considered because of inadvertent oversight or in the event that circumstances or factors have changed since the date that the permit was issued such that the permit should be modified to reflect the changed conditions or factors. Any applicant seeking a modification of the permit shall follow the procedures contained within this Ordinance related to the granting of a new permit.
- 28.2 The operator of any nonmetallic mine that holds a mining permit issued under this Ordinance shall request a modification of such permit if changes occur to the area to be mined, the nature of the planned reclamation, or other material aspects of mining required by the operation plan or reclamation plan approved pursuant to this Ordinance. A modification of the permit will require a new permit approval process pursuant to Section 27 of this Ordinance.

29 Permit Transfer. When one operator succeeds to the interest of another in an uncompleted site, the department shall release the first operator of the responsibilities imposed by the permit only if:

- 29.1 Both operators are in compliance with the requirements and standards of this Ordinance.
- 29.2 The new operator assumes the responsibility of the former Operator to complete the Nonmetallic Mining operation and reclamation of the entire project site in writing and consistent with all representations and warranties made in the application for a permit.
- 29.3 The new operator shows proof of financial responsibility in substantially the same manner and amount as required of the previous operator and agrees to maintain the fee deposit. A permit transferee may request modifications consistent with Section 27 of this Ordinance.
- 29.4 The new operator provides a certified statement attesting that it will continue to operate in accordance with all material elements of the operation plan and permit requirements.

30 Permit Suspension Termination or Revocation.

30.1 Grounds. Waupaca County may suspend or revoke a Nonmetallic Mining permit issued pursuant to this Ordinance if it finds the Operator has done any of the following:

30.1.1 Failed to submit a satisfactory reclamation plan within the time frames specified in this Ordinance or Chapter 43.

30.1.2 Failed to submit required reports or answers to allowable inquiries by the County.

30.1.3 Failed to comply with requirements of the reclamation permit.

30.1.4 Failed to submit or maintain financial assurance as required by this Ordinance.

30.1.5 Failed on a repetitive or material basis to follow the material elements of the approved Mining Operation plan.

30.1.6 Failed to comply with notices of violation and/or right to cure time frames.

30.1.7 Failed to obtain or maintain appropriate permits or authorization to conduct mining activities under state and federal law and regulations provided that the County shall impose revocation or suspension commensurate with the action taken by state and federal regulatory authorities.

30.1.8 Failed to maintain Compliance with any state or federal permit, law, regulation or rule that results in Operator being ordered to not conduct mining activities provided that the County shall impose revocation or suspension commensurate with the action taken by state and federal regulatory authorities.

30.1.9 Failed to supply the County a complete list of current or past compliance issues.

30.2 Procedures. If the County finds grounds for suspending or revoking a Nonmetallic Mining permit issued under this Ordinance, it will issue a special order suspending or revoking such permit in writing.

30.3 Consequences.

30.3.1 If the County makes any of the findings in sub. 30.1.1-30.1.9, it may suspend a Nonmetallic Mining permit for up to thirty (30) days. During the time of suspension, the Operator may not conduct Nonmetallic Mining at the Site, except for reclamation or measures to protect human health and the environment as ordered by the County pursuant to this Ordinance.

30.3.2 If the County makes any of the findings in sub. 30.1.1-30.1.9 and the Operator has been previously notified, the County may revoke a Nonmetallic Mining permit. Upon permit revocation, the operator shall forfeit any financial assurances associated with the Nonmetallic Mining Permit it has provided pursuant to this Ordinance to the County. The County may use forfeited financial assurances to cover any past, current or anticipated future costs, including without limitation staff costs, professional fees and related costs, associated with the permit revocation, including reclamation. Any remaining funds shall be returned to the Operator.

31 **Emergency Review.** The County may, with five (5) days notice to the Operator, require an emergency review for the Nonmetallic Mining permit. Emergency reviews shall be based on instances of significant non-compliance or immediate concerns for human health, safety or the environment. Should the County, through the emergency review, determine instances of non-compliance or other violations of the permit or county ordinance, the County may allow the operator not less than thirty (30) days to rectify any instances of non-compliance or other violations or show substantial improvement in addressing the matter of noncompliance. If after the time allowed, unresolved compliance violations remain, the permit may be revoked. The County is the sole determiner of revocation in emergency review.

32 **Cancellation.** An Operator may apply for a cancellation of a Nonmetallic Mining permit. The request for the cancellation shall be submitted by the Operator to the County in writing. Cancellation of the mining permit does not alleviate responsibility for reclamation requirements in accordance with the reclamation permit.

Part V Enforcement

33 **Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, or this Ordinance, any authorized officer, agent, employee or representative of Waupaca County may inspect any Nonmetallic Mining Site subject to this Ordinance as provided below:

33.1 No person may refuse entry or access onto a Nonmetallic Mining site of a duly authorized officer, employee or agent of Waupaca County or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for Compliance with the Nonmetallic Mining permit, this Ordinance, Chapter NR 135, Wisconsin Administrative Code or subchapter I of Wis. Stats. Ch. 295.

- 33.2 Approved agents of the County shall be granted access to only those site records related to topics that the County has the authority to regulate under applicable law or this Ordinance. All such required records shall be made available to an approved agent within a reasonable time.
- 33.3 Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the Nonmetallic Mining Site.

34 Orders and Citations.

- 34.1 **Enforcement Orders.** The County may issue orders as necessary to effectuate the purposes of this Chapter and to promote and protect the public health, safety and general welfare.
- 34.2 **Mining Permit Orders.** Any order issued by the County to modify permit requirements, enforce the permit or notify the Operator of any suspension or revocation, or requiring a temporary cessation of activity shall be in writing and specify the necessity of the action, requirements of compliance, any time frames for right to cure and other information specific to the order.
- 34.3 **Citations.** The County may issue a citation under Wis. Stats. sec. 66.0113 and Chapter 25 of the Waupaca County General Code of Ordinances, to collect forfeitures to enforce subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance. 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. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.
- 34.4 **Enforcement.** The County may submit any order issued under Section 35 to abate violations of this Ordinance to a district attorney, corporation counsel, municipal attorney or the attorney general for enforcement. The district attorney, corporation counsel, municipal attorney or the attorney general may enforce those orders.
- 35 **Penalties.** Any violation of subchapter I of Wis. Stats. Ch. 295, Chapter NR 135, Wisconsin Administrative Code, this Ordinance or a permit issued pursuant to this Ordinance may result in forfeitures as follows:
- 35.1 Any person who violates Chapter 43, Waupaca County Reclamation Ordinance, Wisconsin Administrative Code or an order issued pursuant to this Ordinance may be required to forfeit not less than twenty-five dollars (\$25) nor

more than one thousand dollars (\$1,000) for each violation. Each day of continued violation is a separate offense. While an order issued under this Ordinance is suspended, stayed or enjoined, this penalty does not accrue.

35.2 Activity prior to permit issuance. Any activity, including building, construction, excavation or other site preparedness activities at the site prior to issuance of the Mining Permit shall result in a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each violation. Each day of violation constitutes a separate offense.

35.3 Violations of this Ordinance are further subject to the forfeitures and penalties established in Chapter 25 of the Waupaca County General Code of Ordinances.

Part VI Fees

36 **Application/Plan Review Fees.** This Ordinance requires the regulatory authority to use its fees only for the administration of its mine permitting ordinance. The County shall establish a fee schedule which lists the fee associated with each requirement discussed in this section.

36.1 **Application Fee for Nonmetallic Mining Permit.** An Applicant for a Nonmetallic Mining Permit shall submit an application and plan review fee at the time the license applications and plans are submitted.

36.2 **Fee Applicability.** The fee shall cover all costs associated with the permitting process including review of mining application and plans, notices, publications, mailings, conducting public hearings and initial site inspections.

36.3 **Fee List.** The Planning and Zoning Office shall keep a Schedule of Fees bearing the pertinent effective date. The fees required by this Ordinance shall be established periodically but not greater than annually or on a semi-annual basis by the County in order to accurately reflect costs associated with review. Required fees may be established on an hourly basis for work to be performed by third-party experts accredited in the field for which the individual is retained, where reasonable and necessary.

37 **Modification Review Fee.** Any operator requesting a permit modification shall pay a modification review fee which shall be established in the same manner as application review fees.

38 **Previously Permitted Sites.** Any Applicant intending to re-open a previously permitted Nonmetallic Mining Site shall submit the Nonmetallic Mining Site Application Fee required by this Ordinance.

Part VII Financial Assurance

39 **Application Fees.** An Application Fee is required for each Applicant for a Nonmetallic Mine Permit under this Ordinance.

39.1 The Application Fee is intended to fund all application review, analysis and investigation activities including, without limitation, inspection costs, experts accredited in the field for which the individual is retained, legal fees and any other reasonable costs related to the issuance of a permit incurred by the County.

40 **Insurance.** In accordance with Section 20 of this Ordinance and in accordance with general industry standards, the County may require proof of appropriate insurance to protect the County from costs associated with damage, improper operation, environmental spills, releases or accidents and any other activity which may result in financial costs to the County. Such insurance shall be only for operational concerns and shall not be intended to fund any manner of reclamation.

40.1 Any insurance required in accordance with this Section and Section 20 may be discontinued only upon mine closure or the end of mining activities, though reclamation may still be ongoing.