

CHAPTER 14

NON-METALLIC MINING RECLAMATION ORDINANCE

14.01 TITLE. Nonmetallic mining reclamation ordinance for the County of Brown.

14.02 PURPOSE. The purpose of this chapter is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Brown County after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes, as amended from time to time.

14.03 STATUTORY AUTHORITY. This chapter is adopted under authority of Section 295.13(1), Wisconsin Statutes, Section NR 135.32, Wisconsin Administrative Code, and Section 59.51, Wisconsin Statutes.

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

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

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

14.07 APPLICABILITY. (1) Overall Applicability. The requirements of this chapter apply to all operators of nonmetallic mining sites within Brown County and as provided in Section NR 135.02(1) and (2), Wisconsin Administrative code except where exempted in **sub. 14.07(2)** and except for nonmetallic mining sites located in a city, village or town within Brown County that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32 (2), Wisconsin Administrative Code.

(2) Exemptions. This chapter does not apply to the following activities listed in Section NR 135.02 (3), Wisconsin Administrative Code.

14.08 ADMINISTRATION. The provisions of this chapter shall be administered by Brown County Zoning.

14.09 EFFECTIVE DATE. The provisions of this chapter shall take effect on September 4, 2007.

14.10 DEFINITIONS. All definitions for the purposes of this chapter are those contained in NR 135.03, Wisconsin Administrative Code.

14.11 STANDARDS. All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained in Subchapter II of Chapter NR 135, Wisconsin Administrative Code.

14.12 NONMETALLIC MINING RECLAMATION PERMIT APPLICATION REQUIRED. No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to the applicable reclamation ordinance unless the activity is specifically exempted in **subs. 14.07 (1), (2).**

(1) Required Submittal. The operator of all nonmetallic mining sites shall apply for a reclamation permit from Brown County Zoning. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(1), Wisconsin Administrative Code.

(2) Reclamation Permit Application Contents. The operator of any nonmetallic mine site shall submit an application that meets the requirements of Sections NR 135.18(2), Wisconsin Administrative Code and the submittals required under **sub. 14.12 (1)** to Brown County Zoning prior to beginning operations.

14.13. RECLAMATION PLAN. (1) Reclamation Plan Requirements. All operators of nonmetallic mining sites subject to this chapter shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.

(2) Existing Plans and Approvals. To avoid duplication of effort, the reclamation plan required by **sub. 14.13 (1)** may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

(3) Approval of Reclamation Plan. Brown County shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to **sub. 14.16(2)**. Conditional approvals of reclamation plans shall be made according to **sub. 14.16 (5)** and denials of reclamation plans made

according to **s. 14.17**. The operator shall keep a copy of the reclamation plan required by this section, once approved by Brown County under this chapter, at the mine site or, if not practicable, at the operator's nearest office or place of business.

14.14 FINANCIAL ASSURANCE. (1) Financial Assurance Requirements. All operators of nonmetallic mining sites in Brown County shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section 135.40, Wisconsin Administrative Code.

(2) Private Nonmetallic Mines. The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with **sub. 14.12** shall submit the financial assurance required by **sub. 14.14 (1)** as specified in the reclamation permit issued to it under this chapter.

(3) Public Nonmetallic Mining. The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

14.15 PUBLIC NOTICE AND RIGHT OF HEARING. (1) Reclamation Plan Hearing. Brown County shall provide public notice and the opportunity for a public informational hearing as set forth in Sections NR 135.20(1) and (2), Wisconsin Administrative Code for any nonmetallic mining site for which a complete reclamation permit application that satisfies **s.14.12** is received.

(2) Local Transportation-Related Mines. No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to **sub. 14.16(3)**.

14.16 ISSUANCE OF A NONMETALLIC MINING RECLAMATION PERMIT. (1) Permit Required. No person may engage in nonmetallic mining or nonmetallic mining reclamation in Brown County without obtaining a reclamation permit issued under this section, except nonmetallic mining sites exempt from this chapter as provided in **sub. 14.07(2)**.

(2) Permit Issuance. Applications for reclamation permits for nonmetallic mining sites that satisfy **s. 14.12** shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21 (2), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with **sub. 14.13 (1)**, and provision by the applicant of financial assurance that conforms with **s. 14.14** payable to Brown County prior to beginning mining.

(3) Automatic Permit for Local Transportation-Related Mines. Brown County shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Sections NR 135.23 (1)(b) through (j), Wisconsin Administrative Code.

Note A reclamation permit is not required under this chapter for nonmetallic mining sites that are operated to provide materials for construction, maintenance

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and repair of transportation facilities that are subject to the Wisconsin Department of Transportation concerning restoration of the nonmetallic mining site, as provided by s. 295.16(1)(c), Stats. Plan review fees may not be assessed for local transportation-related mines permitted under this subsection, and the county or municipality may not assess them an annual fee under s. 27 that is greater than allowed by s. NR 135.23(1)(f), Wis. Adm. Code.

(4) Expedited Review. Any operator of a nonmetallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in **sub. 14.25 (2)**. The expedited review shall be carried out according to the provisions of Section NR 135.23 (2), Wisconsin Administrative Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to **s. 14.15**.

(5) Permit Conditions. Permits issued under this section may include conditions as provided in Section NR 135.21(2), Wisconsin Administrative Code. One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to Section NR 135.40, Wisconsin Administrative Code.

14.17 PERMIT DENIAL. An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exist.

14.18 ALTERNATIVE REQUIREMENTS. (1) Scope of Alternative Requirements Approvable. An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in **s. 14.11**. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.

(2) Procedures. The operator of a nonmetallic mining site requesting an alternate requirement in **sub. 14.18 (1)** shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative code. This shall be submitted in writing to Brown County Board of Adjustments.

(3) Transmittal of Decision on Request for Alternative Requirement. The decision on a request for alternate reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternate requirement was or was not approved.

(4) Notice to Wisconsin Department of Natural Resources. Brown County shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3)(a), Wisconsin Administrative Code.

14.19 PERMIT DURATION. A nonmetallic mining reclamation permit issued under this chapter shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to **sub. 14.32 (2)**, or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.

14.20 PERMIT TRANSFER. A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.

14.21 PREVIOUSLY PERMITTED SITES. For any nonmetallic mining site which had a reclamation permit previously pursuant to Chapter NR 135, Wisconsin Administrative Code, that becomes subject to reclamation permitting authority of Brown County the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified by Brown County pursuant to **sub. 14.23(1)**.

14.22 REVIEW. Any permitting decision or action taken by Brown County under this chapter may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

14.23 PERMIT MODIFICATION. (1) By Brown County. A nonmetallic mining reclamation permit issued under this chapter may be modified by Brown County if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with this chapter. Such modification shall be by an order conforming with the procedures in **s. 14.32** and is provided in Section NR 135.24(1), Wisconsin Administrative Code.

(2) At the Operator's Option. If the operator of any nonmetallic mine that holds a reclamation permit issued under this chapter desires to modify such permit or reclamation plan approved under this chapter, it may request such modification by submitting a written application for such modification to Brown County. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.

(3) Required by the Operator. The operator of any nonmetallic mine that holds a reclamation permit issued under this chapter shall request a modification of such permit if required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this chapter.

(4) Review. All actions on permit modifications requested or initiated under this section are subject to review under **s. 14.22**.

14.24 PERMIT SUSPENSION AND REVOCATION. (1) Grounds. Brown County may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds any of the grounds listed in Section NR 135.25(1), Wisconsin Administrative Code.

(2) Procedures. If Brown County finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in **sub. 14.25 (1)**, it may issue a special order suspending or revoking such permit as set forth in **sub. 14.32(2)**.

(3) Consequences. The consequences of a reclamation permit suspension or revocation order under **sub. 14.24(2)** shall be as set forth in Sections NR 135.25 (2) and (3), Wisconsin Administrative Code.

14.25 ANNUAL OPERATOR REPORTING. (1) Contents and Deadline. Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Section 135.36, Wisconsin Administrative Code. These reports shall be for reclamation during a calendar year, and submitted in writing within 60 days of the end of each calendar year to Brown County Zoning. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under **sub. 14.29(3)**.

(2) Inspection in Lieu of Report. Brown County may, at its discretion, obtain the information required in **sub. 14.25 (1)** by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.

(3) Retention of Annual Reports. Annual reports submitted under this section or inspection records that replace them shall be retained by Brown County for at least 10 years after the calendar year to which they apply. These records, or accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

14.26 PLAN REVIEW FEES. (1) Amount and Applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **sub. 14.12** shall submit a non-refundable plan review fee, see Brown County annual budget schedule for fees. No plan review fee may be assessed under this section on any local transportation-related mine issued an automatic permit under **sub. 14.16 (3)**. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to **s. 14.23**.

(2) Expedited Plan Review Fee. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **s. 14.12** may obtain expedited reclamation plan review by paying a fee, see Brown County annual budget schedule of fee's. Such fee shall be in addition to that required in **sub. 14.26(1)**.

(3) Relation to Annual Fee. Any reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under **s. 14.27**.

14.27 ANNUAL FEES. (1) Areas Subject to Fees, Procedures and Deadline. Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter to Brown County. These fees shall be calculated based on amount of unreclaimed acres of each site, as defined in Section NR 135.39(1)(a), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under **s. 14.29**. Fees shall be paid no later than January 31 for the previous year.

(2) Wisconsin Department of Natural Resources Share of Fee. Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Section NR 135.39(3), Wisconsin Administrative Code. For sites on which no nonmetallic mining has taken place during a calendar year; fees to be paid under this section for the following year shall be **\$15.00**. Brown County

shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31.

(3) Brown County's Share of Fee. Fees paid under this section shall also include an annual fee due to Brown County, which shall be established in Brown County's annual budget.

The annual fee collected by Brown County under this subsection for local transportation-related mines used permits under **sub. 14.16(3)** may not exceed the amounts set forth in Table 2 of Section NR 135.39 and shall include both a share for the Wisconsin Department of Natural Resources and Brown County.

(4) Documentation of Brown County's Share of Fee. If the annual fee is **sub. 14.27(3)** is greater than that established in Section NR 135.93(4), Wisconsin Administrative code, Brown County shall document in writing its estimated program costs and the need for its annual fees established in **sub. 14.27(3)**. This documentation shall be available for public inspection.

14.28 REGULATORY REPORTING DOCUMENTATION. (1) Reporting. Brown County shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code by March 31 for the previous calendar year.

(2) Documentation. Brown County shall, to the best of its ability, maintain the information set forth in Section NR 135.47(3), Wisconsin Administrative Code, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of Brown County's reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

14.29 COMPLETED RECLAMATION - REPORTING, CERTIFICATION AND EFFECT. (1) Reporting. The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code.

(2) Reporting of Interim Reclamation. The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this chapter and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in **sub. 14.29(1)**.

(3) Certification of Completed Reclamation. Brown County shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including re-vegetation as specified in a plan that conforms with **s. 14.13**, Brown County shall issue the mine operator a written certificate of completion.

(4) Effect of Completed Reclamation. If reclamation is certified by Brown County as complete under **sub. 14.29(3)** for part or all of a nonmetallic mining site, then:

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- (1) No fee shall be assessed under **s. 14.27** for the area so certified.
- (2) The financial assurance required by **s. 14.14** shall be released.

(5) Effect of Inaction Following Report of Completed Reclamation. If no written response as required by **sub. 14.29(3)** for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to Brown County for it under **s. 14. 27** shall be refunded.

14.30 PERMIT TERMINATION. When all final reclamation required by a reclamation plan conforming to **s. 14.13** and required by this chapter is certified as complete pursuant to **subs. 14.29(3)**, Brown County shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

14.31 RIGHT OF ENTRY AND INSPECTION. For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of Brown County may inspect any nonmetallic mining site subject to this chapter as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.

14.32 ORDERS AND CITATIONS.

(1) Enforcement Orders. Brown County may issue orders as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 14.13** and a permit issued under this chapter. A violation of this chapter, an order or permit issued pursuant to this chapter or a reclamation plan required by **s. 14.13** and a permit issued under this chapter shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.

(2) Special Orders. Brown County may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to **s. 14.24**, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.

(3) Review of Orders. An order issued under **sub. 14.32(1)** or **sub. 14.32(2)** may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.

(4) Citations. Brown County may issue a citation under s. 66.119, Stats. and Chapter 30 of the Brown County Code of Ordinances to collect forfeitures or require any action needed to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 14.13** and a permit issued under this chapter. 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.

(5) Enforcement. Brown County may submit any order issued under **s. 14.32** to the district attorney, corporation counsel, municipal attorney or the attorney general for enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.

14.33 PENALTIES. Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by **s. 14.13** and a permit issued under this chapter may result in forfeitures as provided in Section 295.19(3), Wisconsin Statutes.