

**11.046 - NONMETALLIC MINING RECLAMATION.**

(1)

GENERAL.

(a)

**Title.** Nonmetallic mining reclamation ordinance for the County of Crawford.

(b)

**Purpose.** The purpose of this section is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Crawford County, in compliance with Ch. NR 135, Wis. Adm. Code, and Subch. 1 of Ch. 295, Wis. Stats.

(c)

**Statutory Authority.** This section is adopted under authority of §295.13(1), Wis. Stats., §NR 135.32, Wis. Adm. Code, and §59.51, Wis. Stats.

(d)

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

(e)

**Interpretation.** In their interpretation and application, the provisions of this section 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 Subch. I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this section may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this section is required by Wisconsin Statutes, or by a standard in Ch. NR 135, Wis. Adm. Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Ch. NR 135, Wis. Adm. Code.

(f)

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

(g)

**Applicability.**

1.

*Overall Applicability.* The requirements of this section apply to all operators of nonmetallic mining sites within Crawford County and as provided in §NR 135.02(1) and (2), Wis. Adm. Code, except where exempted in subsection (1)(g)2.; and except for nonmetallic mining sites located in a city, village or town within Crawford County that has adopted an ordinance pursuant to §295.14, Wis. Stats., and §NR 135.32(2), Wis. Adm. Code.

2.

*Exemptions.* This section does not apply to the exempt activities listed in §NR 135.02(3), Wis. Adm. Code.

(h)

**Administration.** The provisions of this section shall be administered by Crawford County.

(i)

**Definitions.** All definitions for the purposes of this section are those contained in §NR 135.03, Wis. Adm. Code.

(2)

STANDARDS. All nonmetallic mining sites subject to this section shall be reclaimed in conformance with the standards contained in Subch. II of Ch. NR 135, Wis. Adm. Code.

(3)

PERMITTING.

(a)

**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 subsection (1)(g)1., 2. or (j).

1.

*Required Submittal.* The operator of all nonmetallic mining sites shall apply for a reclamation permit from Crawford County. All reclamation permit applications under this section shall be accompanied by the information required by §NR 135.18(1), Wis. Adm. Code.

2.

*Reclamation Permit Application Contents.* The operator of any nonmetallic mine site shall submit an application that meets the requirements of §NR 135.18(2), Wis. Adm. Code, and the submittals required under subsection (3)(a)1. to Crawford County Land

Conservation, Planning, and Zoning Department 225 N. Beaumont,  
Prairie du Chien, Wisconsin 53281, to beginning operations.

(b)

Reclamation Plan.

1.

*Reclamation Plan Requirements.* All operators of nonmetallic mining sites subject to this section shall prepare and submit a reclamation plan that meets the requirements of §NR 135.19, Wis. Adm. Code.

2.

*Existing Plans and Approvals.* To avoid duplication of effort, the reclamation plan required by subsection (3)(b)1. may, by reference, incorporate existing plans or materials that meet the requirements of this section.

3.

*Approval of Reclamation Plan.* The Crawford County Land Conservation, Planning, and Zoning Department shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to subsection (3)(e)2. Conditional approvals of reclamation plans shall be made according to subsection (3)(e)5., and denials of reclamation plans made according to subsection (3)(f). The operator shall keep a copy of the reclamation plan required by this section, once approved by Crawford County under this section, at the mine site or, if not practicable, at the operator's nearest office or place of business.

(c)

Financial Assurance.

1.

*Financial Assurance Requirements.* All operators of nonmetallic mining sites in Crawford County shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of §135.40, Wis. Adm. Code. The amount of financial assurance shall equal as closely as possible the cost to the regulatory authority of hiring a contractor to complete the reclamation according to the reclamation plan.

2.

*Private Nonmetallic Mines.* The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with subsection (3)(a). shall submit the proof of financial assurance required by subsection (3)(c)1. as specified in the reclamation permit issued to it under this section.

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.

(d)

*Public Notice and Right of Hearing.*

1.

*Reclamation Plan Hearing.* Crawford County shall provide public notice and the opportunity for a public informational hearing as set forth in §NR 135.20(1) and (2), Wis. Adm. Code, for any nonmetallic mining site for which a complete reclamation permit application that satisfies subsection (3)(a) 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 subsection (3)(e)3.

(e)

*Issuance of a Nonmetallic Mining Reclamation Permit.*

1.

*Permit Required.* Every operator of a nonmetallic mining site in Crawford County who engages in or plans to engage in nonmetallic mining after September 1, 2001, shall obtain a reclamation permit issued under this section, except nonmetallic mining sites exempt from this section as provided in subsection (1)(g)2. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1, 2001, without a reclamation permit issued pursuant to this section.

2.

*Permit Issuance.* Applications for reclamation permits for nonmetallic mining sites that satisfy subsection (3)(a) shall be issued a reclamation permit or otherwise acted on as provided in §NR 135.21(2), Wis. Adm. Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with subsection (3)(b), and provision by the applicant of financial assurance that conforms with subsection (3)(c) payable to Crawford County prior to beginning mining.

3.

*Automatic Permit for Local Transportation-Related Mines.* Crawford County or its agent 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 §NR 135.23(1)(a), Wis. Adm. Code. This automatic permit shall be issued according to the provisions of §NR 135.23(1)(b) through (j), 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 subsection (4)(d)3. The expedited review shall be carried out according to the provisions of §NR 135.23(1), Wis. Adm. Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to subsection (3)(d).

5.

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

(f)

*Permit Denial.* An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in §NR 135.22, Wis. Adm. Code, exist.

(g)

*Alternative Requirements.*

1.

*Scope of Alternative Requirements Approval.* An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in subsection (2). Such a request may be made only on the basis of the criteria set forth in §NR 135.26(1), Wis. Adm. Code.

2.

*Procedures.* The operator of a nonmetallic mining site requesting an alternate requirement in subsection (3)(g)1. shall demonstrate all the criteria in §NR 135.26(1), Wis. Adm. Code. This shall be submitted in writing to Crawford County Land Conservation, Planning, and Zoning Committee, 225 N. Beaumont, Prairie du Chien, Wisconsin 53821.

3.

*Transmittal of Decision on Request for Alternate Requirements.* The decision on a request for alternative reclamation requirements shall

be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.

4.

*Notice to Wisconsin Department of Natural Resources.* Crawford County shall provide notice to the Wisconsin Department of Natural Resources as provided in §NR 135.26(3)(a), Wis. Adm. Code.

(h)

*Permit Duration.* A nonmetallic mining reclamation permit issued under this section shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to subsection (5)(b)2., or as limited under §NR 135.27, Wis. Adm. Code, where the mine operator is not the landowner.

(i)

*Permit Transfer.* A nonmetallic mining reclamation permit issued under this section shall be transferred to a new owner or operator upon satisfaction of the conditions in §NR 135.28, Wis. Adm. Code.

(j)

*Previously Permitted Sites.* For any nonmetallic mining site which had a reclamation permit previously issued pursuant to Ch. NR 135, Wis. Adm. Code, that becomes subject to reclamation permitting authority of Crawford County, the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified by Crawford County pursuant to subsection (4)(a)1.

(k)

*Review.* Any permitting decision or action made by Crawford County under this section may be reviewed as set forth in §NR 135.30, Wis. Adm. Code.

(4)

#### ADMINISTRATION.

(a)

##### *Permit Modification.*

1.

*By Crawford County.* A nonmetallic mining reclamation permit issued under this section may be modified by Crawford County if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with this section. Such modification shall be by an order conforming with the procedures in subsection (5)(b) and as provided in §NR 135.24(1), Wis. Adm. Code.

2.

*At the Operator's Option.* If the operator of any nonmetallic mine that holds a reclamation permit issued under this section desires to modify

such permit or reclamation plan approved under this section, it may request such modification by submitting a written application for such modification to Crawford County Land Conservation, Planning, and Zoning Department at 225 N. Beaumont, Prairie du Chien, Wisconsin 53821. The application for permit or plan modification shall be acted on using the standards and procedures of this section.

3.

*Required by the Operator.* The operator of any nonmetallic mine that holds a reclamation permit issued under this section shall request a modification of such permit if required under the circumstances set out in §NR 135.27, Wis. Adm. Code. Such application for permit modification shall be acted on using the standards and procedures of this section.

4.

*Review.* All actions on permit modifications requested or initiated under this section are subject to review under subsection (3)(k).

(b)

*Permit Suspension or Revocation.*

1.

*Grounds.* Crawford County may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this section if it finds any of the grounds listed in §NR 135.25(1), Wis. Adm. Code.

2.

*Procedures.* If Crawford County finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in subsection (4)(b)1., it may issue a special order suspending or revoking such permit as set forth in subsection (5)(b)2.

3.

*Consequences.* The consequences of a reclamation permit suspension or revocation order under subsection (4)(b)2. shall be as set forth in §NR 135.25(2) and (3), Wis. Adm. Code.

(c)

*Annual Operator Reporting.*

1.

*Contents and Deadline.* Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of §135.36, Wis. Adm. Code. These reports shall be for reclamation during a calendar year, and submitted in writing by January 31 of the following year to Crawford County Land Conservation, Planning, and Zoning Department. Annual reports shall be submitted until

reclamation at each nonmetallic mining site is certified as complete under subsection (4)(g)3. Forms to be used for annual reporting will be available from the Crawford County Land Conservation, Planning, and Zoning Department.

2.

*Inspection in Lieu of Report.* Crawford County or its agent may, at its discretion, obtain the information required in subsection (4)(c)1. by written documentation of an inspection it completes during a calendar year, as set forth in §NR 135.36(4), Wis. Adm. Code.

3.

*Retention of Annual Reports.* Annual reports submitted under this section or inspection records that replace them shall be retained by Crawford County or its agent 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 Ch. NR 135, Wis. Adm. Code.

(d)

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 subsection (3)(a). shall submit a nonrefundable plan review fee established in the county fee schedule to the Crawford County Land Conservation, Planning, and Zoning Department. No plan review fee may be assessed under this section for any nonmetallic mine site for which an application for an automatic reclamation permit is submitted that meets the requirements of subsection (3)(b)2. or for any local transportation-related mine issued an automatic permit under subsection (3)(e)5. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to subsection (4)(a).

2.

*Establishment of Fee..* The plan review fees shall be established to equal as closely as possible the county's cost of administering the permit and plan review process. Fees will be reviewed annually by the Land Conservation Committee and may be adjusted to account for changes in the cost of program administration.

3.

*Expedited Plan Review Fee.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subsection (3)(a) may obtain expedited reclamation plan review by paying an additional fee as shown in the county's fee schedule. Such fee shall be in addition to that required in subsection (4)(d)1.

4.

*Relation to Annual Fee.* Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under subsection (4)(e).

(e)

*Annual Fees.*

1.

*Areas Subject to Fees, Procedures, Deadline and Amount.* Operators of all nonmetallic mining sites subject to reclamation permits issued under this section shall submit an annual fee to the Crawford County Land Conservation, Planning, and Zoning Department. These fees shall be calculated based on amount of unreclaimed acres of each site, as defined in §NR 135.39(1)(a), Wis. Adm. 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 subsection (4)(g). Fees will be reviewed annually by the Land Conservation Committee and may be adjusted to account for changes in the cost of program administration. 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 §NR 135.39(3), Wis. Adm. 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. Crawford County shall forward fees collected under this subsection to the Wisconsin Department of Natural Resources by March 31.

3.

*Crawford County's Share of Fee.*

a.

Fees paid under this section shall also include an annual fee due to Crawford County or its agent which shall be as listed in the established annual fee schedule.

b.

The annual fee collected by Crawford County under this subsection for local transportation-related mines issued permits under subsection (3)(e)5 may not exceed the amounts set forth in Table 2 of §NR 135.39, Wis. Adm. Code, and shall include both a share for the Wisconsin Department of Natural Resources and Crawford County.

4.

*Reduced Fee for Inactive Mines.* Any site on which no nonmetallic mining activity has taken place in a calendar year shall be assessed a fee for the following calendar year in accordance with the established fee schedule.

(f)

Regulatory Reporting and Documentation.

1.

*Reporting.* Crawford County shall send an annual report to the Wisconsin Department of Natural Resources including the information required by §NR 135.37, Wis. Adm. Code by March 31 for the previous calendar year.

2.

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

(g)

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 section and Ch. NR 135, Wis. Adm. 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 section and Ch. NR 135, Wis. Adm. Code. Reporting of interim

reclamation shall be done according to the procedures in subsection (4)(g)1.

3.

*Certification of Completed Reclamation.* Crawford County or its agent 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 §NR 135.40(7)(c), Wis. Adm. Code. If it is determined that interim or final reclamation is complete, including revegetation as specified in a plan that conforms with subsection (3)(b), Crawford County shall issue the mine operator a written certificate of completion.

4.

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

a.

No fee shall be assessed under subsection (4)(e) for the area so certified.

b.

The financial assurance required by subsection (3)(c) shall be released.

c.

For sites which are reported as interim reclaimed under subsection (4)(g)2. and so certified under subsection (4)(g)3., financial assurance for reclaiming the certified area shall be waived.

5.

*Effect of Inaction Following Report of Completed Reclamation.* If no written response as required by subsection (4)(g)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 Crawford County or its agent for it under subsection (4)(e) shall be refunded.

(h)

*Permit Termination.* When all final reclamation required by a reclamation plan conforming to subsection (3)(b) and required by this section is certified as complete pursuant to subsection (4)(g) Crawford County shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

(5)

## ENFORCEMENT.

(a)

*Right of Entry and Inspection.* For the purpose of ascertaining compliance with the provisions of Subch. I of Ch. 295, Wis. Stats.; Ch. NR 135, Wis. Adm. Code; or this section, any authorized officer, agent, employee or representative of Crawford County or its agent may inspect any nonmetallic mining site subject to this section as provided in §295.17(1), Wis. Stats., and §NR 135.42, Wis. Adm. Code.

*Note:* Under §NR 135.42(1), Wis. Adm. Code, persons entering nonmetallic mine sites under this right of inspection shall obtain training and provide their own safety equipment as needed to comply with applicable Federal, State and local laws or regulations.

(b)

### *Orders and Citations.*

1.

*Enforcement Orders.* Crawford County or its agent may issue orders as set forth in §295.19(1)(a), Wis. Stats.; to enforce Subch. I of Ch. 295, Wis. Stats.; Ch. NR 135, Wis. Adm. Code; this section, a permit issued pursuant to this section or a reclamation plan required by subsection (3)(b) and a permit issued under this section. A violation of this section, an order or permit issued pursuant to this section or a reclamation plan required by subsection (3)(b) and a permit issued under this section shall be considered a violation of Subch. I of Ch. 295, Wis. Stats., and Ch. NR 135, Wis. Adm. Code.

2.

*Special Orders.* Crawford County or its agent may issue a special order as set forth in §295.19(1)(b) and (c), Wis. Stats., suspending or revoking a nonmetallic mining reclamation permit pursuant to subsection (4)(b), or directing an operator to immediately cease an activity regulated under Subch. I of Ch. 295, Wis. Stats.; Ch. NR 135, Wis. Adm. Code; or this section until the necessary plan approval is obtained.

3.

*Review of Orders.* An order issued under subsection (5)(b)1. or 2., may be reviewed as provided in §NR 135.43(2), Wis. Adm. Code.

4.

*Citations.* Crawford County may issue a citation under §66.0113, Wis. Stats., and Crawford County to collect forfeitures or require any action needed to enforce Subch. I of Ch. 295, Wis. Stats.; Ch. NR 135, Wis. Adm. Code; this section, a permit issued pursuant to this

section or a reclamation plan required by subsection (3)(b) and a permit issued under this section. 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.* Crawford County may submit any order issued under subsection (5)(b) to the District Attorney, the Corporation Counsel, the Municipal Attorney or the Attorney General for enforcement as provided in §295.19(1)(d), Wis. Stats.

(c)

*Penalties.* Any violation of Subch. I of Ch. 295, Wis. Stats.; Ch. NR 135, Wis. Adm. Code; this section, a permit issued pursuant to this section or a reclamation plan required by subsection (3)(b) and a permit issued under this section may result in forfeitures as provided in §295.19(3), Wis. Stats.