

## **Article A: General**

### **Sec. 16-1-1 Title.**

Nonmetallic Mining Reclamation Ordinance for Bayfield County, Wisconsin. (Ord. Of 5-29-2001)

### **Sec. 16-1-2 Purpose.**

The purpose of this Ordinance is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in Bayfield County after the effective date of this Ordinance, in compliance with Chapter NR 135, Wis. Adm. Code and Subch. I of Ch. 295, Wis. Stats.

### **Sec. 16-1-3 Statutory Authority.**

This Ordinance is adopted under authority of Ch. 295.13(1), Wis. Stat. Ch. NR 135.32, Wis. Adm. Code, and Ch. 59.51, Wis. Stats.

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

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

### **Sec. 16-1-5 Interpretation.**

In their interpretation and application, the provisions of this Ordinance 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 Chapter 295, Wis. Stats. and Ch. NR 135, Wis. Adm. Code. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this Ordinance 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.  
(Ord. Of 5-29-2001)

**Sec. 16-1-6 Severability.**

Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

(Ord. of 5-29-2001)

**Sec. 16-1-7 Applicability.**

- (a) **Overall Applicability.** The requirements of this Ordinance apply to all operators of nonmetallic mining sites within Bayfield County operating on or commencing to operate after August 1<sup>st</sup>, 2001 except as exempted in 16-1-7(b), and for nonmetallic mining sites located in a city, village or town within Bayfield County that has adopted an ordinance pursuant to Ch. 295.14, Wis. Stats., and Ch. NR 135.32(2), Wis. Adm. Code. This Ordinance does not apply to nonmetallic mining sites where nonmetallic mining permanently ceases before August 1, 2001. This Ordinance applies to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in Section 16-1-14(d).
- (b) **Exemptions.** This Ordinance does not apply to the following activities:
- (1) Nonmetallic mining at a site or that portion of a site that is subject to permit and reclamation requirements of the Wisconsin Department of Natural Resources under Chs. 30.19, 30.195 or 30.20, Wis. Stats., and complies with Ch. NR 340, Wis. Adm. Code.
  - (2) Excavations subject to the permit and reclamation requirements of Chapters 30.30 or 30.31, Wis. Stats.
  - (3) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
  - (4) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the transportation facility.
  - (5) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

- (6) Excavations for building construction purposes conducted on the building site.
- (7) Nonmetallic mining at nonmetallic mining sites that affect less than one (1) acre of total area over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under Ch. 293, Wis. Stats.
- (9) Any activities required to prepare, operate or close a solid waste disposal facility under Ch. 289, Wis. Stats., or a hazardous waste disposal facility under Ch. 291, Wis. Stats., that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this Ordinance apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property where the solid waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.
- (10)
  - a. Nonmetallic mining conducted to obtain stone, soil, sand or gravel for construction, reconstruction, maintenance or repair of a highway, railroad, airport, or any other transportation facility or part thereof, if the nonmetallic mining is subject to the requirements of the Wisconsin Department of Transportation concerning the restoration of the nonmetallic mining site.
  - b. This exemption only applies to a nonmetallic mining operation with limited purpose and duration where the Wisconsin Department of Transportation actively imposes reclamation requirements and the operator reclaims the nonmetallic mining site in accordance with these requirements. The duration of the exemption shall be specific to the length of the Wisconsin Department of Transportation contract for construction of a specific transportation project.
  - c. If a nonmetallic mining site covered under subsections a. and b. is used to concurrently supply materials for projects unrelated to the Wisconsin Department of Transportation project, the exemption in this paragraph still applies, provided that the site is fully reclaimed under Wisconsin Department of Transportation contract and supervision.

- (11) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from these activities.
- (12) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under Ch. 30.21, Wis. Stats.

(Ord. of 5-29-2001)

### **Sec. 16-1-8 Administration.**

The provisions of this Ordinance shall be administered by the Bayfield County Zoning Department.

(Ord. of 5-29-2001)

### **Sec. 16-1-9 Effective Date.**

Pursuant to Ch. NR 135, Wis. Adm. Code, and Subch. I of Ch. 295, Wis. Stats., the effective date of this Ordinance shall be June 7, 2001.

(Ord. of 5-29-2001)

### **Sec. 16-1-10 Definitions.**

The following terms shall have the meanings indicated in this Ordinance:

- (a) **Alternative Requirement.** An alternative to the reclamation standards of this Ordinance provided through a written authorization granted by the Bayfield County pursuant to Section 16-1-18.
- (b) **Applicable Reclamation Ordinance.** Means a nonmetallic mining reclamation ordinance, including this Ordinance, that applies to a particular nonmetallic mining site and complies with the requirements of Ch. NR 135, Wis. Adm. Code and Subch. I of Ch. 295, Wis. Stats., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined in Section 16-1-20(b)(3). If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Ch. NR 135, Wis. Adm. Code.
- (b) **Borrow Site** - An area outside of a transportation project site from which stone, soil, sand or gravel is excavated for use at the project site, except the term does not include commercial sources.

- (c) **Contemporaneous Reclamation** - The sequential or progressive reclamation of portions of the nonmetallic mining site affected by mining operations that is performed in advance of final site reclamation, but which may or may not be final reclamation, performed to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.
- (d) **County** - The County Authority; The Bayfield County Planning and Zoning Department.
- (e) **Department** - The Wisconsin Department of Natural Resources.
- (f) **Environmental Pollution** - Has the meaning in Ch. 295.11(2), Wis. Stats.
- (g) **Existing Mine** - A nonmetallic mine where nonmetallic mining takes place before August 1, 2001.
- (h) **Financial Assurance** - A commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in Section 16-1-14 and is sufficient to pay for reclamation activities required by this Ordinance.
- (i) **Landowner** - The person who has title to land in fee simple or who holds a land contract for the land. A landowner is not a person who owns nonmetallic mineral rights to land, if a different person possesses title to that land in fee simple or holds a land contract for that land.
- (j) **Municipality** - Any city, town or village.
- (k) **Nonmetallic Mineral** - A product, commodity or material consisting principally of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material. Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, talc and topsoil.
- (l) **Nonmetallic Mining or mining** - means all of following:
  - (1) Operations or activities at a nonmetallic mining site for the extraction from the earth of mineral aggregates or nonmetallic minerals for sale or use by the operator. Nonmetallic mining includes use of mining equipment or techniques to remove materials from the in-place nonmetallic mineral deposit, including drilling and blasting, as well as associated activities such as excavation, grading and dredging. Nonmetallic mining does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

- (2) Processes carried out at a nonmetallic mining site that are related to the preparation or processing of the mineral aggregates or nonmetallic minerals obtained from the nonmetallic mining site. These processes include, but are not limited to stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, blasting, grading, crushing, screening, scalping and dewatering.
- (n) **Nonmetallic Mining Reclamation or Reclamation** - The rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this Ordinance, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and if practicable the restoration of plant, fish and wildlife habitat.
- (o) **Nonmetallic Mining Refuse** - Waste soil, rock and mineral, as well as other natural site material resulting from nonmetallic mining. Nonmetallic mining refuse does not include marketable by-products resulting directly from or displaced by the nonmetallic mining that are scheduled to be removed from the nonmetallic mining site within a reasonable period of time after extraction.
- (p) **Nonmetallic Mining Site or Site** - All contiguous areas of present or proposed mining described in subsection 16-1-10(p)(1), subject to the qualifications in subsection 16-1-10(p)(2).
- (1) Nonmetallic mining site means the following:
- a. The location where nonmetallic mining is proposed or conducted.
  - b. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
  - c. Areas where nonmetallic mining refuse is deposited.
  - d. Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
  - e. Areas where grading or regrading is necessary.

- f. Areas where nonmetallic mining reclamation activities are carried out or structures needed for nonmetallic mining reclamation, such as topsoil stockpile areas, revegetation test plots, or channels for surface water diversion, are located.
- (2) Nonmetallic mine site does not include any of the following areas:
- a. Those portions of sites listed in subsection 16-1-10(p)(1) not used for nonmetallic mining or purposes related to nonmetallic mining after August 1, 2001.
  - b. Separate, previously mined areas that are not used for nonmetallic mineral extraction after August 1, 2001 and are not contiguous to mine sites, including separate areas that are connected to active mine sites by public or private roads.
  - c. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiles of materials used for an industrial process unrelated to nonmetallic mining.
- (q) **Operator** - Any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.
- (r) **Registered Geologist** - A person who is registered as a professional geologist pursuant to Chs. 443.037 and 443.09, Wis. Stats.
- (s) **Registered Professional Engineer** - A person who is registered as a professional engineer pursuant to Chs. 443.04 and 443.09, Wis. Stats.
- (t) **Regulatory Authority** - Means the following:
- (1) Bayfield County for nonmetallic mine sites located within its jurisdiction, or
  - (2) One (1) of the following:
    - a. A municipality in which the nonmetallic mining site is located and which has adopted an applicable reclamation ordinance,
    - b. The county in which the nonmetallic mining site is located, if no reclamation municipal ordinance exists pursuant to subsection 16-1-10(t)(1), provided the county has an applicable reclamation ordinance, or

- c. The Wisconsin Department of Natural Resources, but only if there is no applicable reclamation ordinance enacted by the municipality or the county in which the nonmetallic mining site is located.
- (u) **Replacement of Topsoil** - The replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining reclamation for the purposes of providing adequate vegetative cover and stabilization of soil conditions needed to achieve the approved post-mining land use and as required by the reclamation plan approved pursuant to this Ordinance.
- (v) **Solid Waste** - Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Ch. 283, Wis. Stat., or source material, special nuclear material or by-product material, as defined in Ch. 254.31 (1), Wis. Stats.
- (w) **Topsoil** - The surface layer of soil which is generally more fertile than the underlying soil layers, which is the natural medium for plant growth and which can provide the plant growth, soil stability and other attributes necessary to meet the success standards approved in the reclamation plan.
- (x) **Topsoil Substitute Material** - Soil or other unconsolidated material either used alone or mixed with other beneficial materials and which can provide the plant growth, site stability and other attributes necessary to meet the success standards approved in the reclamation plan.
- (y) **Unreclaimed Acre or Unreclaimed Acres** means those unreclaimed areas in which nonmetallic mining has occurred after August 1, 2001 and areas where nonmetallic mining reclamation has been completed but is not yet certified as reclaimed under Section 16-1-29. However the term "Unreclaimed Acre" or "Unreclaimed" Acres does not include any of the following:
- (1) Those areas where reclamation has been completed and certified as reclaimed under Section 16-1-29(c).
  - (2) Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.

- (3) Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this Ordinance but are not yet affected by nonmetallic mining.
- (4) Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials used for an industrial activity such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
- (5) For purposes of fees under Section 16-1-27, those areas within a nonmetallic mining site which Bayfield County has determined to have been successfully reclaimed on an interim basis in accordance with Sec. 289.30 Wis. Stats.
- (z) **Zoning Committee.** The Bayfield County Planning and Zoning Committee, a County Committee created by the County Board under the authorization of Ch. 59.69, Wis. Stats. to act in the matter of land use.
- (aa) **Zoning Department.** The Bayfield County Planning and Zoning Department.

(Ord. 5-29-2001)