

**TOWN OF EATON
NONMETALLIC MINING RECLAMATION ORDINANCE**

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PART 1 – GENERAL

1. 1.00 Title. Nonmetallic Mining Reclamation Ordinance for the Town of Eaton.
2. 2.00 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 the Town of Eaton after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter 1 of Chapter 295, Wisconsin Statutes.
3. 3.00 Statutory Authority. This chapter is adopted under authority of §295.14(1), Wisconsin Statutes, Section NR 135.32, Wisconsin Administrative Code and §60.22, Wisconsin Statutes.
4. 4.00 Restrictions Adopted Under Other Authority. The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining required by §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, regulation, ordinances, or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
5. 5.00 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 1 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.
6. 6.00 Severability. Should a court of competent jurisdiction declare any portion of this chapter unconstitutional or invalid, the remainder of this chapter shall not be affected.
7. 7.00 Applicability.
 - 7.10 Overall Applicability. The requirements of this chapter apply to all operators of nonmetallic mining sites within the Town of Eaton operating on or commencing to operate after August 1, 2001, and as provided in Sections NR 135.02(1) and (2), Wisconsin Administrative Code, except where exempted in sub. 7.20.

- 7.20 Exemptions. This chapter does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code.
8. 8.00 Administration. The Town of Eaton Town Board shall administer the provisions of this chapter or such other body designated by the Town Board for this purpose.
9. 9.00 Effective Date. The provisions of this chapter shall take effect on June 1, 2001.
10. 10.00 Definitions. All definitions for the purposes of this chapter are those contained in Section NR 135.03, Wisconsin Administrative Code.

PART II – STANDARDS

11. 11.00 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.

PART III – PERMITTING

12. 12.00 Nonmetallic Mining Reclamation Permit Application.

12.10 Required Submittal. The operator of all nonmetallic mining sites that operate on or after August 1, 2001, shall apply for a reclamation permit from the Town of Eaton. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(3), Wisconsin Administrative Code.

12.20 Existing Mines. The operator of any existing nonmetallic mine shall apply for an automatic reclamation permit from the Town of Eaton by providing the information required by Section NR 135.18(1), Wisconsin Administrative Code, and the submittals required under Sub. 12.10 no later than August 1, 2001, to the Town of Eaton, c/o Town Clerk.

12.30 New Mines. The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining that will begin operations after August 1, 2001, or which has not applied for an automatic reclamation permit pursuant to Sub. 12.20 shall submit an application that meets the requirements of Sections NR 135.18(2), Wisconsin Administrative Code, and the submittals required under Sub. 12.10 to the Town of Eaton prior to beginning operations. A plan review fee as specified in Section 26 shall accompany this application.

13. 13.00 Reclamation Plan

13.10 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.

13.20 Existing Mines. The operator of any nonmetallic mining site that submits an automatic permit application in conformance with Sub. 12.20 shall submit the reclamation plan required by Sub. 13.10 within an established time – that is, between one and three years of receipt of the permit.

13.30 New Mines. The operator of any nonmetallic mining site that applies for a permit in conformance with Sub. 12.30 shall submit the reclamation plan required by Sub. 13.10 with its application for a reclamation permit.

13.40 Existing Plans and Approvals. To avoid duplication of effort, the reclamation plan required by Sub. 13.10 may, by reference, incorporate existing plans or materials that meet the requirements of this chapter. Previous approvals for nonmetallic mining sites that apply in accordance with Sub. 12.20 shall satisfy the requirements of Sub. 13.10 if they meet the requirements of Section NR 135.21(1) (d), Wisconsin Administrative Code.

13.50 Approval of Reclamation Plan. The Town of Eaton shall approve, conditionally approve, or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to Sub. 16.20 for existing mines and Sub. 16.40 for new mines. Conditional approvals of reclamation plans shall be made according to Sub. 16.70 and denials of reclamation plans made according to Section 17. The operator shall keep a copy of the reclamation plan required by this section, once approved by the Town of Eaton under this chapter, at the mine site or, if not practicable, at the operator's nearest office or place of business.

14. 14.00 Financial Assurance.

14.10 Financial Assurance Requirements. All operators of nonmetallic mining sites in the Town of Eaton shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section 135.40, Wisconsin Administrative Code.

14.20 Existing Mines. The operator of any nonmetallic mining site that submits an automatic permit application in conformance with Sub. 12.20 shall submit the financial assurance required by Sub. 14.10 within an established time – that is, between one and three years of receipt of the permit.

14.30 New Mines. The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with Sub. 12.30 shall submit the proof of

financial assurance required by Sub. 14.10 as specified in the reclamation permit issued to it under this chapter.

14.40 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.

15. 15.00 Public Notice and Right of Hearing.

15.10 New Mines. The Town of Eaton 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 Sub. 12.30 is received.

15.20 Existing Mines. No public notice of informational hearing is required on an application for a reclamation permit for an existing mine that satisfies Sub. 12.20, except as provided in Section NR 135.20(4)(c), Wisconsin Administrative Code.

15.30 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. 16.50.

16. 16.00 Issuance of a Nonmetallic Mining Reclamation Permit.

16.10 Permit Required. Every operator of a nonmetallic mining site in the Town of Eaton 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 chapter, as provided in Sub. 7.20. No person may engage in nonmetallic mining or nonmetallic mining reclamation after September 1, 2001, without a reclamation permit issued pursuant to this chapter.

16.20 Automatic Permit for Existing Mines. The Town of Eaton shall issue an automatic reclamation permit to the operator of any nonmetallic mining that submits an application meeting the requirements of Sub. 12.20, as set forth in Section 135.21(1), Wisconsin Administrative Code. The automatic permit shall be issued within 30 days of such application.

16.30 Evaluation of Follow-Up Submittals for Existing Mines. Mines covered by automatic permits issued under Sub. 16.20 shall submit a reclamation plan in accordance with Sub. 13.20 and proof of financial assurance in accordance with Sub. 14.20 by the deadlines established in those subsections, which are within an established time – that is, between one and three years of receipt of the permit. The Town of Eaton, where extenuating circumstances exist, may grant reasonable extensions to these deadlines in writing. The follow-up submittals required by this subsection shall be evaluated using the criteria and procedures in Sections NR 135.21(1)(d), (e), and (f).

16.40 Permit Issuance for New Mines. Applications for reclamation permits for nonmetallic mining sites not permitted under Sub. 16.20 that satisfy Sub. 12.30 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. 13.30 and provisions by the applicant of financial assurance that conforms with Sub. 14.30 payable to the Town of Eaton prior to beginning mining.

16.50 Automatic Permit for Local Transportation-Related Mines. The Town of Eaton 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.

16.60 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 Section 26.20. 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 Section 15.

16.70 Permit Conditions. Permits issued under this section may include conditions as provided in Section NR 135.21(3), 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.

17. 17.00 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.

18. 18.00 Alternative Requirements.

18.10 Scope of Alternative Requirements Approvable. An operator of a nonmetallic mining site may request an alternative requirement to any reclamation standard established in Section 11.00. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.

18.20 Procedures. The operator of a nonmetallic mining site requesting an alternate requirement in Sub. 18.10 shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. This shall be submitted in writing to the Town Zoning Board of Appeals of the Town of Eaton. The Town Zoning Board of Appeals shall follow the procedures found in §60.65, Wis. Stats. A quorum of two-

thirds of the members of the Town Zoning Board of Appeals is required for each meeting. Applicants have the right to make a presentation to the Town Zoning Board of Appeals regarding their compliance with the criteria of Section NR 135.26(1), Wisconsin Administrative Code. The Town Zoning Board of Appeals members may ask questions of the applicants and request such documentation and other information as the members deem necessary to determine whether the criteria of Section NR 135.26(1) are met by the applicant. Should the applicant be asked to supplement the record with such documentation or other information, the Board will set an appropriate deadline for compliance with the request. Following the close of evidence received, the Town Zoning Board of Appeals must hold a deliberation session to occur within 30 days of the receipt of all evidence and records. Such deliberation session will be in open session. A majority roll call vote of the Town Zoning Board of Appeals is necessary to approve, approve conditionally, or deny the application.

18.30 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.

18.40 Notice to Wisconsin Department of Natural Resources. The Town of Eaton shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3), Wisconsin Administrative Code.

19. 19.00 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. 32.20 or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.
20. 20.00 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.
21. 21.00 Previously Permitted Sites. For any nonmetallic mining site which had a reclamation permit previously issued 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. 23.10.
22. 22.00 Review. Any permitting decision or action made by the Town of Eaton under this chapter may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

PART IV – ADMINISTRATION

23. 23.00 Permit Modification

23.10 By the Town of Eaton. A nonmetallic mining reclamation permit issued under this chapter may be modified by the Town of Eaton 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 to the procedures in Section 32 and as provided in Section NR 135.24(1), Wisconsin Administrative Code.

23.20 At the Operator's Option. If 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 the Town Zoning Board of Appeals. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.

23.30 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.

23.40 Review. All actions on permit modifications requested or initiated under this section are subject to review under Section 22.

24. 24.00 Permit Suspension or Revocation.

24.10 Grounds. The Town of Eaton 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.

24.20 Procedures. If the Town of Eaton finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in Sub. 24.10, it may issue a special order suspending or revoking such permit as set forth in Sub. 32.20.

24.30 Consequences. The consequences of a reclamation permit suspension or revocation order under Sub. 24.20 shall be as set forth in Sections NR 135.25(2) and (3), Wisconsin Administrative Code.

25. 25.00 Annual Operator Reporting.

25.10 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 following the end of each calendar year to the Town of Eaton. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under Sub. 29.30.

25.20 Inspection in Lieu of Report. The Town of Eaton may, at its discretion, obtain the information required in Sub. 25.10 by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.

25.30 Retention of Annual Reports. Annual reports submitted under this section or inspection records that replace them shall be retained by the Town of Eaton for at least ten 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.

26. 26.00 Plan Review Fees.

26.10 Amount and Applicability. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under Sub. 12.30 shall submit a non-refundable plan review fee of \$250. 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 Sub. 12.20 or for any local transportation-related mine issued an automatic permit under Sub. 16.50. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Section 23.

26.20 Expedited Plan Review Fee. A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under Sub. 12.30 may obtain expedited reclamation plan review by paying a fee of \$100. Such fee shall be in addition to that required in Sub. 26.10.

26.30 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 Section 27.

27. 27.00 Annual Fees.

27.10 Areas subject to Fees, Procedures, and Deadline. Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees to the Town of Eaton. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under Sub. 27.20 and a share for the Town of Eaton under Sub. 27.30 that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining reclamation sites.

These fees shall be calculated based on amount of unreclaimed acres of each site, as defined in Section NR 135.39(1), 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 Section 29. Fees shall be paid no later than December 31 before the year for which they apply.

27.20 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 years, fees to be paid under this section for the following year shall be \$15. Fees collected under this subsection shall be forwarded to the Wisconsin Department of Natural Resources by March 31 of the year for which they are collected.

27.30 Town’s Share of Fee. Fees paid under this section shall also include an annual fee due to the Town of Eaton per the table below.

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Dollar	Annual Fee
1 to 5 acres (does not include mines < 1 acre)	\$ 450
6 to 10 acres	\$ 600
11 to 15 acres	\$ 750
16 to 25 acres	\$1,000
26 to 50 acres	\$1,100
51 acres or larger	\$1,250

28 28.00 Regulatory Reporting and Documentation.

28.10 Reporting. The Town of Eaton shall send an annual report to the Wisconsin Department of Natural Resources, including the information required by Section NR 135.37, Wisconsin Administrative Code.

28.20 Documentation. The Town of Eaton 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 the Town of Eaton reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

29 29.00 Completed Reclamation – Reporting, Certification, and Effect.

29.10 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.

29.20 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. 29.10.

29.30 Certification of Completed Reclamation. The Town of Eaton 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)©, Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including revegetation, as specified in a plan that conforms with Section 13, the Town of Eaton shall issue the mine operator a written certificate of completion.

29.40 Effect of Completed Reclamation. If reclamation is certified by the Town of Eaton as complete under Sub. 29.30 for part or all of a nonmetallic mining site, then:

- (1) No fee shall be assessed under Section 27 for the area so certified.
- (2) The financial assurance required by Section 14 shall be released.
- (3) For sites which are reported as interim reclaimed under Sub. 29.20 and so certified under Sub. 29.30, financial assurance for reclaiming the certified area shall be waived.

29.50 Effect of Inaction Following Report of Completed Reclamation. If no written response as required by Sub. 29.30 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 the Town of Eaton for it under Section 27 shall be refunded.

30. 30.00 Permit Termination. When all final reclamation required by a reclamation plan conforming to Section 13 and required by this chapter is certified as complete pursuant to Section 29, the Town of Eaton shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

PART V – ENFORCEMENT

31 31.00 Right of Entry and Inspection. For the purpose of ascertaining compliance with the provisions of Subchapter 1 of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee, or representative of the Town of Eaton 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.

32 32.00 Orders and Citations.

32.10 Enforcement Orders. The Town of Eaton may issue orders, as set forth in §295.19(1)(a), Wis. Stats., 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 Section 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 Section 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.

32.20 Special Orders. The Town of Eaton 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 Section 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.

32.30. Review of Orders. An order issued under Sub. 32.10 or 32.20 may be reviewed as provided in Section NR 135.42(2), Wisconsin Administrative Code.

32.40 Citations. The Town of Eaton may issue a citation under §66.0113, Wis. Stats., 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 Section 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.

32.50 Enforcement. The Town of Eaton may submit any order issued under Section 32 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.

33 33.00 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 Section 13 and a

permit issued under this chapter may result in forfeitures, as provided in §295.19(3), Wis. Stats.