

**RACINE COUNTY LAND & WATER CONSERVATION**

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**RACINE COUNTY LAND AND WATER CONSERVATION COMMITTEE**  
**Also Known As A Subcommittee of**  
**THE RACINE COUNTY ECONOMIC DEVELOPMENT AND LAND USE PLANNING**  
**COMMITTEE**

Ives Grove Auditorium – 14200 Washington Avenue  
Monday, 6:00 p.m., March 4, 2024

**SUMMARY MINUTES OF COMMITTEE MEETING**

Committee Members Present: M. Osterman, J. Eckman, G. Horeth, T. Greil,  
and T. Rutkowski

Committee Members Excused: R. Grove, and T. Wishau

Youth in Governance Present: M. Patil and C. Naber

Staff Present: C. Sampson

1. Chairman M. Osterman took roll call and called the March 4, 2024, Racine County Land and Water Conservation Committee meeting to order at 6:00 p.m.
2. A motion by G. Horeth, seconded by T. Rutkowski to approve the minutes from the February 5, 2024, meeting as presented. The motion was approved (5/0) by the Committee, (1-0) Youth-in-Governance.
3. M. Osterman introduced a Resolution to support a grant proposal for the National Association of Conservation Districts in partnership with the Root-Pike Watershed Initiative Network for an urban agriculture and community conservation project at the Racine County Youth Development and Care Center. The project is the building of a micro farm to install a garden to grow pollinator and native plants from seed and then harvest plants to transplant them along County roads and highways, for water and fluoride uptake. There is up to \$60,000 available with a 25% match with in-kind services. The program would provide an economic benefit to the County and would be beneficial as a training program for Youth at the Development and Care Center. A motion by G. Horeth, seconded by T. Rutkowski to approve the resolution as presented. The motion was approved (5/0) by the Committee, (2/0) Youth-in-Governance.
4. M. Osterman discussed his trip to San Diego for the National Association of Conservation (NACD) annual meeting. A resolution for a new initiative was put forth by business groups, such as insurance companies attempting to monetize the natural resources of public lands. The air, mineral and water rights would be assigned a

5. value, and they would be able to regulate, legislate and control it. There will be a policy in the farm bill to oppose it.

The Wisconsin Land and Water Conference starts this week. The Board meeting is Wednesday morning. Registration was cut off due to reaching capacity for the first time ever. The outreach is in over 50 external committees. C. Sampson received donations from Lehman's and O&H bakeries, inSinkErator, and Case/IH. All items are on the site that can be viewed through Wisconsin Land and Water for bidding.

6. C. Sampson indicated that the Tree Program received 296 orders, with over 30,000 trees. The sale was about average even though the price of hardwood trees had increased to \$25 per bundle. Distribution of the trees will be in April at the County Fair Grounds.
7. C. Sampson indicated that the next Farmland Preservation Planning meeting will be in May or June. There are three chapters and a summary left to complete. The towns may want public hearings before adoption.
8. C. Sampson provided highlights of the Animal Waste Management Ordinance including a definition of the unconfined manure pile. This definition is important as it is needed to determine if a violation has occurred. The nutrient management and the manure storage plans are also part of this section. Our County has more manure storage closures than new construction. Violation notices include a verbal warning, then a notice of violation letter, a second letter to delivered by the County Sheriff's office, lastly a fine of \$200 per day is imposed. No suggested changes to the Ordinance have been made.
9. T. Greil said he went to Parkside and watched the movie "Common Ground". It showcased how Roundup contaminated our water and everything we eat has a trace of Roundup in it. The movie will run on March 16, 2024, at the Oriental Theatre in Milwaukee. Some discussion was made about bringing the viewing of the movie to Racine as well.

Field Day will be closer to September this year. Speakers are still needed.

C. Sampson said the Fox River Summit is Thursday, March 14th at the Veteran's Terrance in Burlington. Attendance is usually about 120 to 130 people.

10. G. Horeth provided an update regarding the Waukesha Water diversion. We have continued to see that the water levels have remained static between 1.6 and 1.7.
  
11. C. Sampson lead the discussion regarding the Solar Farm Ordinance. Questions were brought up related to the following: a cap on electricity when the use is only going to increase, why there is a height restriction, deer fencing, the drain tile management plan and insurance information at the end of the ordinance.
  
12. No other business discussed.
  
13. T. Rutkowski moved to adjourn the meeting.

**MEMORANDUM OF AGREEMENT BETWEEN THE**  
**United States Department of Agriculture, Natural Resources Conservation Service**  
**AND**  
**Racine County Land Conservation Department**

**I. PURPOSE**

This Memorandum of Agreement (MOA) is entered into between the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and the Racine County Land Conservation Department (Racine County LCD). The collective name of both entities is hereafter referred to as the “Parties”.

The Parties have common objectives of delivering technical and financial assistance to farmers, forest stewards, and other entities to voluntarily protect, restore, and enhance the productivity of American agricultural lands. The Parties recognize the importance of natural resources, the wise use and management of these natural resources, and, as appropriate, the protection and/or development of these natural resources. This agreement is made and entered into with the objectives of:

- Continuing to support the delivery of excellent and innovative customer service;
- Recognizing conservation planning as foundational to our work, and working together to meet the conservation planning assistance needs of our cooperators/customers;
- Strengthening and modernizing conservation delivery to optimize efficiency and effectiveness;
- Broadening our outreach to existing and new customers and partners;
- Supporting science-based decision making as close to the resource issue/opportunity as possible;
- Encouraging a voluntary approach as the primary means of accomplishing conservation goals; and
- Using sound approaches to strengthen each Party and its role in the delivery of soil, water, and related natural resource conservation across the nation.

## **II. BACKGROUND**

The Parties share a history of collaborating to deliver comprehensive technical and financial assistance to farmers, forest stewards, and other entities to voluntarily protect, restore, and enhance natural resources.

The Soil Conservation Service was established in 1935 (renamed NRCS in 1994 to reflect its broader conservation mission). NRCS is committed to “helping people help the land.” It provides assistance and resources for conservation practices that improve water and air quality, prevent erosion, restore wetlands, and enhance wildlife. NRCS’s approach to mission delivery and customer service is deeply rooted in the notion that locally-led, voluntary efforts yield the most effective and productive outcomes. Locally-led conservation is the principle that farmers, ranchers, and forest stewards know their lands better than anyone else based on their personal knowledge and experience with those lands. As such, they are best positioned to make optimal decisions for the benefit of their operations, its natural resource conditions, and their communities.

Racine County LCD is responsible for planning, setting priorities and implementing land and water conservation programs as authorized under Chapter 92, Wisconsin Statutes.

## **III. STATEMENT OF MUTUAL BENEFIT**

The Parties recognize the importance of working together to broaden strategic assessment and planning authority under the Soil and Water Resources Conservation Act of 1977 for the conservation, protection, and enhancement of soil, water, and related natural resources. The Parties further recognize that natural resources are finite and under increasing pressure from a variety of impacts. Soil, water, air, plants, animals, and energy are all addressed under the programs, initiatives, and partnership efforts of the Parties.

In order to deliver the necessary technical and financial assistance to enable locally-led, voluntary conservation, the Parties agree to adhere to the principles, roles, and responsibilities outlined in this section of the MOA. This MOA does not affect or modify existing regulations or agency responsibilities and authorities. Moreover, this MOA does not commit either part to activities beyond the scope of its respective mission and statutory authorities.

## **IV. RESPONSIBILITIES**

### **A. NRCS will:**

1. Designate the NRCS Assistant State Conservationist for Field Operations as the liaison to Racine County LCD for this Agreement. Implementation of the MOA at the local level will be coordinated by the NRCS District Conservationist.
2. Collaborate with Racine County LCD to develop and implement work strategies designed to meet the soil and water conservation goals and objectives of the County Land and Water

Resource Management Plan, as well as NRCS's Local Work Group, State Technical Committee, and Agency Priorities.

3. Acknowledge the County Land and Water Resource Management Plan when convening the Local Work Group for developing and updating County conservation priorities.
4. Provide consultation and guidance to the County Land Conservation Committee and County Conservation staff on NRCS policy and technical issues when requested.
5. Assist in providing technical training to County employees in the art and science of soil conservation and water quality technology, to the extent that NRCS personnel can be made available.
6. Acknowledge State and County standards and specifications related to conservation work, and help inform prospective participants of such requirements. NRCS has no authority to assume joint responsibility when the County adopts standards and specifications that differ from NRCS standards and specifications. NRCS has no authority to help the County apply practices for State or County programs using standards and specifications that are not contained in the Field Office Technical Guide (FOTG).

B. Racine County LCD will:

1. Designate the County Conservationist, or equivalent, as the liaison for this Agreement.
2. Collaborate with the NRCS to develop and implement work strategies designed to meet the soil and water conservation goals and objectives of the County Land and Water Resource Management Plan, as well as NRCS Local Work Group, State Technical Committee, and Agency Priorities.
3. Include County resource concerns and priorities as set by the Local Work Group when developing and updating the County Land and Water Resource Management Plan.
4. Acknowledge NRCS standards and specifications contained in the NRCS FOTG related to federal conservation work, and help inform prospective participants of such requirements.
5. Assist in promoting NRCS programs to the extent as determined by the County.
6. Assist in providing training to NRCS employees on State and/or County laws and ordinances related to conservation program implementation, to the extent that County personnel can be made available.

## **V. DATA AND INFORMATION SHARING**

1. Any information furnished to NRCS under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).
2. Activities performed under this agreement may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.
3. Racine County LCD personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. Racine County LCD personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with 7 USC 8791 (Section 1619 of PL 110-234, the Food, Conservation, and Energy Act of 2008).
4. See Appendix A, “ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS.” The signatory agrees to abide by these requirements as a condition of receiving access to such information.

## **VI. GENERAL PROVISIONS**

### **A. Period of Performance**

1. This MOA takes effect upon the signature of the Parties and shall remain in effect until mutually modified or terminated.

### **B. Amendments**

1. This MOA may be amended upon written request of either Party and the subsequent written concurrence of the other. Either of the Parties may terminate this MOA with a 60-day written notice to the other.

### **C. Transfer of Funding or Non-Monetary Resources**

1. This MOA is established to document the collaborative relationship between the Parties. Nothing in this MOA shall require either Party to obligate or transfer funding, or anything of value. This may include, but is not limited to:
  - a. Office spaces and equipment/supplies
  - b. Vehicles and associated expenses (e.g., fuel, maintenance)
  - c. Computers, software, and technical equipment

2. Specific work projects or activities that involve the transfer of funds, services, or property will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. The appropriate instruments include:
  - a. Cooperative Agreement (2 CFR 200.24), which allows federal agencies to transfer a thing of value to the State, local or Tribal government, or other recipient to carry out a public purpose of support or stimulation authorized by law of the United States.
  - b. Contribution Agreement (7 CFR 6962a), which is a unique statutory authority allowing NRCS to enter into an agreement with a non-federal entity that shares a mutual purpose in carrying out NRCS programs. All parties must contribute resources to the accomplishment of these objectives.
  - c. Reimbursable Agreement (31 USC 6505; PL 90-577), which allows federal agencies to provide specialized or technical services to State and local governments.

D. Other

1. This MOA is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.
2. The Parties and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each Party will carry out its separate activities in a coordinated and mutually beneficial manner.
3. All activities and programs conducted under this MOA shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; Civil Rights Restoration Act of 1987 (Public Law 100-250); and other nondiscrimination statutes; namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendment of 1972, and the Age Discrimination Act of 1975. Also, they will be in accordance with regulations of the Secretary of Agriculture (7 CFR Part 15, subpart A), which provide that no person in the United State shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving federal financial assistance from the Department of Agriculture or any Agency thereof.
4. All activities conducted under this MOA shall be in compliance with the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D).





## APPENDIX A

### ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS

#### I. Purpose and Background

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter, “Acknowledgment”) is to require acknowledgment by Racine County Land Conservation Department (hereinafter, the “Conservation Cooperator”) of the requirements of 7 USC 8791 (Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. The Conservation Cooperator assists USDA in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Federal agreement. Those individuals or organizations (governmental or nongovernmental) that assist USDA with providing conservation-related services are known as Conservation Cooperators.

#### II. NRCS Conservation Cooperator

As a Conservation Cooperator, the Conservation Cooperator is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for the Conservation Cooperator to provide conservation related services or to perform monitoring, assessing, or evaluating of conservation benefits (as specified in the agreement between NRCS and the Conservation Cooperator). Disclosure to the Conservation Cooperator can include receiving the protected information either 1) directly from USDA; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer’s permission.

#### III. Section 1619 of the 2008 Farm Bill

Section 1619 of the Food, Conservation, and Energy Act of 2008 hereinafter, “section 1619” provides that USDA, or any “contractor or cooperator” of USDA, “shall not disclose—(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in the programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.” USDA may disclose protected information to a USDA cooperator when such cooperator is “providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices” if USDA determines that the protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. The Conservation Cooperator is a “contractor or cooperator” of USDA within the meaning of Section 1619. Accordingly, the Conservation Cooperator may not subsequently disclose any information protected by section 1619. By entering the agreement that references this Acknowledgement, the Conservation Cooperator is certifying future compliance with the statutory obligations under Section 1619.

#### **IV. Responsibilities**

- A. The Conservation Cooperator certifies that:
1. It acknowledges and understands that the Conservation Cooperator is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Conservation Cooperator will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this Acknowledgment. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Conservation Cooperator will be held responsible should disclosure of the protected information occur.
  2. Acceptance of the agreement referencing this Acknowledgment legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the Conservation Cooperator to comply with the provisions in Section 1619. The Conservation Cooperator must consult with USDA prior to providing protected information to an entity or individual outside of the Conservation Cooperator and as necessary to implement the program to ensure that such release is permissible.
  3. The Conservation Cooperator will use the protected information only to perform work that is directly connected to conservation related services or perform monitoring, assessing, or evaluating conservation benefits, as specified in the agreement between NRCS and the Conservation Cooperator (hereinafter, "the Work"). Use of the protected information to perform work that is not directly connected to the Work is expressly prohibited.
  4. The Conservation Cooperator must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information in order to perform the Work.
  5. The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer a Conservation Cooperator, or when individuals currently affiliated with the Conservation Cooperator become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with the provisions of this Acknowledgment.
  6. The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
  7. When the Conservation Cooperator is unsure whether particular information is covered or protected by Section 1619, the Conservation Cooperator must consult with USDA to determine whether the information must be withheld.
  8. This Acknowledgment is nontransferable and may not be bought, sold, traded, assigned, extended to, or given free of charge to any other individual or organization not directly covered by this Acknowledgment.
  9. Use of the protected information for any purpose is expressly prohibited when an individual or organization is no longer a Conservation Cooperator. When the Conservation Cooperator

is no longer a Conservation Cooperator, any protected information provided under this Acknowledgment must be immediately destroyed or returned to USDA. The Conservation Cooperator must provide to USDA written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.

10. The State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

## V. Protected Information

- A. Examples of non-releasable information under Section 1619 of the Farm Bill include, but **not limited to**, the following:
  1. State identification and county number (where reported and where located).
  2. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
  3. Farm, tract, field, and contract numbers.
  4. Production shares and share of acres for each Farm Serial Number (FSN) field.
  5. Acreage information, including crop codes.
  6. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
  7. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
  8. Location of conservation practices.
- B. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the Conservation Cooperator shall consult with USDA if there is any uncertainty as to the provision of such information.
- C. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The Conservation Cooperator must consult with USDA as to whether specific information falls within this exception prior to relying on this exception.

## VI. Violations

The Conservation Cooperator will be held responsible for violations of this Acknowledgment and Section 1619. A violation of this Acknowledgment by the Conservation Cooperator may result in action by USDA, including termination of the underlying Federal agreement.

**VII. Effective Period**

This Acknowledgment will be in effect on the date of the final signature of the underlying agreement and continues until USDA notifies the Conservation Cooperator that the Acknowledgment is no longer required based on changes in applicable Federal law.

## Unfunded Cooperative Agreement Face Sheet

Agreement Number	Amendment No.	Period of Performance	DUNS:
			EIN:
Natural Resources Conservation Service (NRCS) (Name and Address)		Partner Organization (Name and Address)	
NRCS Program Contact		FPAC - BC Administrative Contact:	Partner Administrative Contact:
		Partner Program Contact:	
CFDA Number	Authority	Type of Action	Instrument type
<b>10.902</b>	<b>16 U.S.C. 590 a-f</b>		<b>Unfunded Cooperative Agreement</b>
Location:			
Details:			
<p>A complete agreement includes this Face Sheet, Continuation Face Sheet(s)(if applicable), the Statement of Work, and the Unfunded Cooperative Agreement Initial Estimate and Annual Usage Report, attached hereto and incorporated herein.</p>			
<p>This agreement is subject to applicable USDA NRCS statutory provisions and regulations. In accepting this agreement or amendment, the undersigned represents that he or she is duly authorized to act on behalf of the Partner organization and agrees to comply with agreement terms and conditions, including all attachments.</p>			
Name and Title of Authorized Agency Representative		Signature	Date
Name and Title of Authorized Partner Representative		Signature	Date
		<b>DRAFT - DO NOT SIGN</b>	

**NONDISCRIMINATION STATEMENT** - The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

**PRIVACY ACT STATEMENT** - The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 552a).

## **Statement of Work**

### **I. Purpose**

The purpose of this agreement is to accelerate delivery of Farm Bill programs and enhance conservation delivery through a partnership with the Racine County Land Conservation Department. The Natural Resources Conservation Service (NRCS) and Racine County Land Conservation Department (Partner) (together, Parties) have a mutual interest in delivering timely and effective assistance to customers participating in USDA programs and addressing natural resource concerns.

This agreement supplements the Memorandum of Agreement between the Parties and documents areas of common interest and clarifies the roles of federal, state, and local partners in providing conservation leadership and technical and financial assistance to customers in order to help them conserve and enhance natural resources through a voluntary cooperative approach. The agreement will specify the transfer of resources between NRCS and the Partner to accomplish delivery of NRCS programs and mutual conservation priorities.

### **II. Objectives**

The Parties will jointly address opportunities, concerns, and problems related to the use of natural resources that help keep land healthy. Benefits of these activities include sustained and improved agricultural productivity; cleaner, safer, and more dependable water supplies; clean air; abundant wildlife; enhanced recreational opportunities; tranquil and scenic landscapes; reduced damages caused by flood, fires, and other natural disasters; and an enhanced natural resource base to support continued economic development and strengthen quality of life.

### **III. Budget Narrative**

The Parties intend to share resources as identified in the “Resources Required” section of this agreement. Because the level of support offered by each party may vary from year to year, at the beginning of each fiscal year the Parties must cooperate to plan and document the specific resources allocated for that year’s performance using the Unfunded Cooperative Agreement Initial Estimate and Annual Usage Report.

### **IV. Responsibilities of the Parties**

#### **A. NRCS will:**

1. In accordance with Section VI below, provide access to NRCS vehicles, equipment, technology, and technical tools to the extent available (intermittent, non-exclusive basis) to facilitate mission delivery and enable mutually beneficial program outcomes.
2. In accordance with Section VI below, provide access to shared office spaces to the extent available, where parties can better collaborate to achieve mutually beneficial outcomes and provide improved access and services to customers within the local community.

3. Employees of NRCS shall participate in efforts under this agreement solely as representatives of the United States. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of Partner or any member of Partner. They also shall not assist the Partner or any member of the Partner with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with Partner, or any member of Partner, concerning future employment and shall refrain from participation in work regarding the Partner until approved by the Agency.

B. Partner will:

1. In accordance with Section VI below, provide access to shared office spaces on an intermittent, non-exclusive basis, where the parties can better collaborate to achieve mutually beneficial outcomes and provide improved access and services to customers within the local community.
2. Utilize and report vehicle usage in accordance with Section VI, below.
3. Provide an annual report of activities and accomplishments to NRCS by the end of each fiscal year.
4. By entering into this agreement, the undersigned attests that the Partner:
  - a. Has not been convicted of a felony criminal violation under Federal or State law in the past 24 months preceding the date of signature, nor has any officer or agent of the Partner been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature.
  - b. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
5. Ensure that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies. In addition, Partner agrees to comply with FPAC and NRCS requirements related to access to Government owned or controlled information systems as may be amended from time to time and communicated to the Partner.

## **V. Expected Accomplishments and Deliverables**

See the attached Memorandum of Agreement (MOA), which documents the mutually agreed-to responsibilities of the parties and is incorporated herein.

## **VI. Resources Required**

NRCS and the Partner may potentially share resources such as office space, vehicles, equipment, and supplies to carry out program activities to the extent available by each Party. For details see the Unfunded Cooperative Agreement Initial Estimate and Annual Usage Report. All resources provided by



NRCS are subject to availability of funds. In the event of a lapse in appropriations and Government shutdown, the Partner will not be permitted to use NRCS resources.

#### A. Vehicles

NRCS vehicles may be utilized for official business only as it relates to the work specified in this agreement and attachments, if available and needed.

1. Partner may request use of a government vehicle (GOV) in order to facilitate delivery of conservation technical assistance to landowners in support of the NRCS mission. Use of the vehicle will significantly increase the efficiency of the delivery of conservation programs. Approval from local NRCS Field Office shall be required for each and every vehicle use request.
2. Vehicle operators may only use GOVs for NRCS official business specified under this agreement. Use of vehicle by Partner must directly be related to a NRCS related conservation project or activity. Operators must avoid, when possible, any situation that may convey an impression to the public that the vehicle operator is using the assigned vehicle for an unofficial purpose.
3. Vehicle operators must immediately report any safety or mechanical deficiencies to local NRCS representative and must not operate the vehicle with known mechanical problems or safety deficiencies. NRCS is responsible for correcting deficiencies.
4. The NRCS will share a GOV with the Partner for official NRCS business. GOVs shall not be used to support any revenue-generating activity for the Partner.
5. The Partner will obtain prior written approval from NRCS for using vehicles at irregular hours or under circumstances in which using motor vehicles may create an unfavorable public reaction (for example, during Federal holiday or after business hours).
6. NRCS will bear the cost of maintenance of vehicles used by the Partner. Except in the case of an accident caused by a Partner driver (see vehicle accident provisions below), the NRCS will make repairs as necessary for safety and as needed to keep vehicle in safe operating condition.
7. NRCS will ensure placement of Federal Motor Vehicle Registration System (FMVRS) registration card in every GOV, which serves as the registration and proof of insurance documentation to be provided to law enforcement.
8. The NRCS technical contact for the agreement will work closely with the Partner in fulfilling the terms and conditions of this attachment at the local level.
9. Home-to-work transportation by Partner employees is prohibited.
10. The Partner will ensure that each vehicle operator has a valid state driver's license and instruct operators to carry a valid state driver's license while operating a GOV.

11. The Partner will ensure vehicle operators use all safety devices and follow appropriate motor vehicle manufacturer safety guidelines when operating GOVs. Seat belts must be used when operating or riding in a GOVs.
12. The Partner will ban all vehicle operators from text messaging and using tobacco (smoke and smokeless) while using GOVs.
13. The Partner will utilize the NRCS-provided fleet card to pay for all fuel and repairs, with the exception of accident repairs for which the Partner is paying an auto repair facility directly (see accident provisions below). The Partner must comply with all NRCS fleet card policies, to include but not limited to the use of unique driver PINs, receipt retention requirements, fleet card training requirements, and prohibitions against using the card for unofficial purposes. Partner drivers must safeguard the fleet card at all times to prevent it from potential unauthorized use.
14. The Partner will immediately report all vehicle accidents and traffic violations to NRCS and complete all required documents to report accidents. The Partner will reimburse NRCS or pay an auto repair Company directly for any and all repairs to the GOV as a result of an accident caused by the Partner operator and pay all traffic violation citations.
15. The Partner will assume responsibility for claims arising from accidents caused by Partner Drivers. The Partner will be responsible for receiving, processing, and paying tort claims that are submitted due to an accident caused by a Partner driver.
16. The Partner will notify the NRCS immediately of any loss, theft, or damage to a GOV, GOV license plates, or fleet cards.
17. It is prohibited for individuals other than federal employees or Partner employees performing official NRCS business under this agreement to ride as passengers in GOVs. Any other passengers must be approved through the passenger approval process described in NRCS vehicle policy.
18. The technical contact for the Partner will work with NRCS with fulfilling the terms and conditions of this attachment at the local level.
19. The use of GOVs may be suspended or revoked by NRCS, if it determines that corrective action is needed to meet the provisions of this attachment.
20. The furnishing of vehicles is contingent upon the availability of vehicles and appropriations.
21. The vehicle use policies outlined in this agreement do not contain all Federal, Departmental, and NRCS policies regarding the use of motor vehicles. This document is not intended to provide complete details, and the NRCS and the Partner must abide by all other appropriate policies governing GOV use.
22. The Partner employee will be required to obtain LincPass, or equivalent security credentials, if applicable.
23. The vehicle use policies outlined in this agreement do not contain all Federal, Departmental, and NRCS policies regarding the use of motor vehicles. This document is not intended to

provide complete details, and the NRCS and the Partner must abide by all other appropriate policies governing GOV use.

**B. Office Space**

1. Shared work and office spaces are needed to more effectively carry out program activities and provide quality service to our mutual customers.
2. NRCS may have reserved work spaces in NRCS offices or spaces on an as needed basis, as well as access to common spaces such as conference rooms, kitchens, etc.

**C. Equipment and Technology**

1. NRCS may provide the Partner access to USDA computers, software, and the technical information needed to perform the work outlined in this agreement.
2. NRCS may provide access to technologies and applications to ensure consistent technical standards and documentation.

**VII. Milestones**

On a yearly basis the Parties shall jointly complete the Unfunded Cooperative Agreement Annual Usage Report.

**VIII. Special Provisions**

- A. This agreement may be extended or amended upon written request of either NRCS or the Partner and the subsequent written concurrence of the other. Either the NRCS or the Partner may terminate this agreement with a 60-day written notice to the other.
- B. The Partner assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- C. Employees of the Partner shall remain its employees while carrying out their duties under this agreement and will not be considered Federal employees or agents of the United States for any purposes under this agreement.
- D. Employees of NRCS will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.
- E. Each party assumes responsibility for the actions of its own officials and employees acting within the scope of their employment to the extent provided by Federal, tribal, state, or local laws, including liability for injury to persons or damage to property resulting from the conduct of its own operations. The Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S.C. 2671-80).

#### F. Privacy Act and Prohibition Against Certain Internal Confidentiality Agreements

1. Activities performed under this agreement may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.
2. The Partner’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The Partner’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with 7 USC 8791 (Section 1619 of PL 110-234, the Food, Conservation, and Energy Act of 2008).
3. The Partner agrees to comply with the “Prohibition Against Certain Internal Confidentiality Agreements:”
  - a. You may not require your employees or contractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  - b. You must notify your employees or contractors that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this agreement provision are no longer in effect.
  - c. The prohibition in paragraph (1) of this agreement provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - d. If NRCS determines that you are not in compliance with this agreement provision, NRCS:
    - i. Will prohibit your use of funds under this agreement, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
    - ii. May pursue other remedies available for your material failure to comply with agreement terms and conditions.

#### G. Acknowledgment of Section 1619 Compliance

The Partner agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791 as described below.

1. Responsibilities.
  - a. Signature on this agreement indicates acknowledgment and understanding that the Partner is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Partner will not subsequently disclose information protected by

section 1619 to any individual or organization that is not directly covered by this agreement. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Partner will be held responsible should disclosure of the protected information occur.

- b. Acceptance of this agreement legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the Partner to comply with the provisions in Section 1619. The Partner must consult with NRCS prior to providing protected information to an entity or individual outside of the Partner and as necessary to implement the program to ensure that such release is permissible.
- c. The Partner will use the protected information only to perform work that is directly connected to this agreement. Use of the protected information to perform work that is not directly connected to this agreement is expressly prohibited.
- d. The Partner must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this agreement.
- e. The provisions in Section 1619 are continuing obligations. Even when the Partner is no longer a Partner, or when individuals currently affiliated with the Partner become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
- f. The Partner must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- g. When the Partner is unsure whether particular information is covered or protected by Section 1619, the Partner must consult with NRCS to determine whether the information must be withheld.
- h. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this agreement. Upon the agreement end date, any protected information provided under this agreement must be immediately destroyed or returned to NRCS. The Partner must provide to NRCS written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
- i. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

## 2. Protected Information.

- a. Examples of the types of information prohibited by disclosure under Section 1619

include, but are not limited to, the following:

- i. State identification and county number (where reported and where located).
  - ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
  - iii. Farm, tract, field, and contract numbers.
  - iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
  - v. Acreage information, including crop codes.
  - vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
  - vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
  - viii. Location of conservation practices.
- b. Section 1619 allows disclosure of “payment information (including payment information and the names and addresses of Partners of payments) under any Department program *that is otherwise authorized by law*” (emphasis added). The names and payment information of producers generally may be provided to the public; however, the Partner shall consult with NRCS if there is any uncertainty as to the provision of such information.
  - c. Section 1619 also allows disclosure of otherwise protected information if “the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite.” The Partner must consult with NRCS as to whether specific information falls within this exception prior to relying on this exception.
3. Violations. The Partner will be held responsible for violations of this provision and Section 1619. A violation of this provision by the Partner may result in action by NRCS, including termination of the underlying Federal agreement.
  4. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until NRCS notifies the Partner that it is no longer required based on changes in applicable Federal law.

#### H. Records

1. Comply with state and federal legal requirements and limitations for access and use of relevant records. Confidential and personal information is for official use only and under no circumstances will it be used for personal gain. Adequate safeguards will be in place to protect confidential and personal information and appropriate training will be conducted to ensure all staff members and Board supervisors are advised of record policies and procedures and that NRCS records and District records are to be maintained in separate file cabinets at all times.
2. The Partner Records are subject to Wisconsin Open Records Law.
3. Any Partner personnel with access to USDA facilities and computer systems shall be subject to the security background checks as required by USDA.

4. In the event of a lapse in appropriations and government shutdown, the Partner will not be permitted access to any NRCS records.

I. Technical Standards

Partner personnel must use the NRCS Field Office Technical Guide (FOTG) and/or other science-based technical standards if assisting with NRCS programs or activities.

J. Training

1. The Parties may provide appropriate leadership in administrative and technical training as determined by program needs and required by USDA, NRCS and Partner policy.
2. Training may also include the orientation of employees in organizational philosophies, programs, authorities, roles and responsibilities of the parties.
3. As applicable and as resources allow, training sponsored by either Party can be made available to each Party's personnel without cost to the other party, including timely notice to the other of any impending training opportunities.

K. Civil Rights

All activities and programs conducted under this Agreement shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; Civil Rights Restoration Act of 1987 (Public Law 100-250); and other nondiscrimination statutes; namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendment of 1972, and the Age Discrimination Act of 1975. Also, they will be in accordance with regulations of the Secretary of Agriculture (7 CFR Part 15, subpart A), which provide that no person in the United State shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof.

Unfunded Cooperative Agreement Initial Estimate and Annual Usage Report

Agreement  
Number

Partner Name

Period of  
report

Date

Service	Quantity	Provided by	
Space Provided	Square Footage	NRCS	Partner
Vehicle Usage	Mileage		
Equipment usage	Details		
Personnel	Hours provided and position title		



## Chapter 12.5 - NONMETALLIC MINING RECLAMATION

*Footnotes:**--- (1) ---**Editor's note— Ord. No. 2001-8, adopted May 22, 2001, enacted new §§ 21-1—21-33. Said provisions have been renumbered at the discretion of the editor as §§ 12.5-1—12.5-93, to better fit the format of the Code.*

## ARTICLE I. - GENERAL

## Sec. 12.5-1. - Title.

Nonmetallic mining reclamation chapter for the County of Racine.

(Ord. No. 2001-8, 5-22-01)

## Sec. 12.5-2. - 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 County of Racine after the effective date of this chapter, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, W.S.A.

(Ord. No. 2001-8, 5-22-01)

## Sec. 12.5-3. - Statutory authority.

This chapter is adopted under authority of W.S.A. § 295.13(1), Section NR 135.32, Wisconsin Administrative Code, and W.S.A. § 59.51.

(Ord. No. 2001-8, 5-22-01)

## Sec. 12.5-4. - Restrictions adopted under other authority.

The purpose of this chapter is to adopt and implement the uniform statewide standards for nonmetallic mining reclamation required by W.S.A. § 295.12(1)(a), 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.

(Ord. No. 2001-8, 5-22-01)

## Sec. 12.5-5. - 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, W.S.A. 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.

(Ord. No. 2001-8, 5-22-01)

#### Sec. 12.5-6. - 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.

(Ord. No. 2001-8, 5-22-01)

#### Sec. 12.5-7. - Applicability.

(a) *Overall applicability.* The requirements of this chapter apply to all operators of nonmetallic mining sites within the County of Racine, except as exempted in subsection (b) and for nonmetallic mining sites located in a city, village or town within the County of Racine that has adopted an ordinance pursuant to W.S.A. § 295.14, and Section NR 135.32(2), Wisconsin Administrative Code. This chapter does not apply to nonmetallic mining sites where nonmetallic mining permanently ceased before August 1, 2001. This chapter applies to nonmetallic mining conducted by or on behalf of a county, municipality, or for the benefit or use of the state or any state agency, board, commission or department, except that the financial assurance requirements of section 12.5-43 do not apply.

(b) *Exemptions.* This chapter 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 W.S.A. §§ 30.19, 30.195 or 30.20, and complies with Chapter NR 340, Wisconsin Administrative Code.
- (2) Excavations subject to the permit and reclamation requirements of W.S.A. §§ 30.30 or 30.31.
- (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 when less than one (1) acre of total affected acreage occurs over the life of the mine.
- (8) Any mining operation, the reclamation of which is required in a permit obtained under W.S.A., ch. 293.
- (9) Any activities required to prepare, operate or close a solid waste disposal facility under W.S.A., ch. 289, or a hazardous waste disposal facility under W.S.A., ch. 291, that are conducted on the property where the facility is located, but an applicable nonmetallic mining reclamation ordinance and the standards established in this chapter 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 by a public utility pursuant to a permit under W.S.A., § 30.21.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-8. - Administration.

The provisions of this chapter shall be administered by the Racine County Planning and Development Department.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-9. - Effective date.

The provisions of this chapter shall take effect upon publication.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-7, 5-22-07)

Sec. 12.5-10. - Definitions.

In this chapter:

*Alternative requirement* means an alternative to the reclamation standards of this chapter provided through a written authorization granted by the County of Racine pursuant to section 12.5-47.

*Applicable reclamation ordinance* means a nonmetallic mining reclamation ordinance, including this chapter, that applies to a particular nonmetallic mining site and complies with the requirements of this Chapter NR 135, Wisconsin Administrative Code and subchapter I of ch. 295, W.S.A., unless the Wisconsin Department of Natural Resources is the regulatory authority as defined herein. If the Wisconsin Department of Natural Resources is the regulatory authority, "applicable reclamation ordinance" means the relevant and applicable provisions of Chapter NR 135, Wisconsin Administrative Code.

*Borrow site* means 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.

*Contemporaneous reclamation* means 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.

*Department* means the Wisconsin Department of Natural Resources.

*Environmental pollution* has the meaning in W.S.A., § 295.11(2).

*Financial assurance* means a commitment of funds or resources by an operator to a regulatory authority that satisfies the requirements in section 12.5-43 and is sufficient to pay for reclamation activities required by this chapter.

*Highwall* means a vertical or nearly vertical face in solid rock or a slope of consolidated or unconsolidated material that exceeds a slope of 3:1.

*Landowner* means 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.

*Licensed professional geologist* means a person who is licensed as a professional geologist pursuant to W.S.A. ch. 470.

*Municipality* means any city, town or village.

*Nonmetallic mineral* means 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.

*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 de-watering.

*Nonmetallic mining reclamation or reclamation* means the rehabilitation of a nonmetallic mining site to achieve a land use specified in a nonmetallic mining reclamation plan approved under this chapter, 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.

*Nonmetallic mining refuse* means 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.

*Nonmetallic mining site or site* means all contiguous areas of present or proposed mining described in subsection (1), subject to the qualifications in subsection (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 (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.

*Operator* means 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.

*Person* means an individual, owner, operator, corporation, limited liability company, partnership, association, county, municipality, interstate agency, state agency or federal agency.

*Registered professional engineer* means a person who is registered as a professional engineer pursuant to W.S.A., § 443.04.

*Regulatory authority* means one (1) of the following:

- (1) County of Racine for nonmetallic mine sites located within its jurisdiction, or
- (2) 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 a., provided the county has an applicable reclamation ordinance; or
- c. The Wisconsin Department of Natural Resources, in cases where a county mining reclamation program is no longer in effect under W.S.A. § 295.14, but only if there is no applicable reclamation ordinance enacted by the municipality or the county in which the nonmetallic mining site is located.

*Replacement of topsoil* means the replacement or redistribution of topsoil or topsoil substitute material to all areas where topsoil was actually removed or affected by nonmetallic mining 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 chapter.

*Solid waste* means 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 W.S.A., ch. 283, or source material, special nuclear material or by-product material, as defined in W.S.A., § 254.31 (1).

*Topsoil* means 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.

*Topsoil substitute material* means 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.

*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 subsection 12.5-72(c). However, the term does not include any areas described in subsection (1).

- (1) Unreclaimed acre" or "unreclaimed acres" does not include:
  - a. Those areas where reclamation has been completed and certified as reclaimed under subsection 21-29(c).

- b. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
- c. Those portions of nonmetallic mining sites which are included in an nonmetallic mining reclamation plan approved pursuant to this chapter but are not yet affected by nonmetallic mining.
- d. 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.
- e. For purposes of fees under section 12.5-70, those areas within a nonmetallic mining site which the County of Racine has determined to have been successfully reclaimed on an interim basis in accordance with subsection 12.5-72(c).

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Secs. 12.5-11—12.5-25. - Reserved.

## ARTICLE II. - STANDARDS

Sec. 12.5-26. - Standards.

All nonmetallic mining sites subject to this chapter shall be reclaimed in conformance with the standards contained below.

(a) *General standards.*

- (1) Refuse and other solid wastes. Nonmetallic mining refuse shall be reused in accordance with a reclamation plan. Other solid wastes shall be disposed of in accordance with applicable rules of the Wisconsin Department of Natural Resources adopted pursuant to W.S.A., chs. 289 and 291.
- (2) Area disturbed and contemporaneous reclamation. Nonmetallic mining reclamation shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.
- (3) Public health, safety and welfare. All nonmetallic mining sites shall be reclaimed in a manner so as to comply with federal, state, and local regulations governing public health, safety, and welfare.
- (4)



Habitat restoration. When the land use required by the reclamation plan approved pursuant to this chapter requires plant, fish or wildlife habitat, it shall be restored, to the extent practicable, to a condition at least as suitable as that which existed before the lands were affected by nonmetallic mining operations.

- (5) Compliance with environmental regulations. Reclamation of nonmetallic mining sites shall comply with any other applicable federal, state and local laws including those related to environmental protection, zoning and land use control.
- (b) *Surface water and wetlands protection.* Nonmetallic mining reclamation shall be conducted and completed in a manner that assures compliance with the Wisconsin Department of Natural Resources' water quality standards for surface waters and wetlands contained in Chapters NR 102 to NR 105, Wisconsin Administrative Code. Before disturbing the surface of a nonmetallic mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from the site to prevent pollution of waters of the state shall be installed in accordance with the reclamation plans approved pursuant to this chapter. Diverted or channelized runoff resulting from reclamation may not adversely affect neighboring properties.
- (c) *Groundwater protection.*
  - (1) Groundwater quantity. A nonmetallic mining site shall be reclaimed in a manner that does not cause a permanent lowering of the water table that results in adverse effects on surface waters or a significant reduction in the quantity of groundwater reasonably available for future users of groundwater.
  - (2) Groundwater quality. Nonmetallic mining reclamation shall be conducted in a manner which does not cause groundwater quality standards in Chapter NR 140, Wisconsin Administrative Code to be exceeded at a point of standards application defined in that chapter.
- (d) *Topsoil management.*
  - (1) Removal. Topsoil and topsoil substitute material shall be provided as specified in the reclamation plan approved pursuant to this chapter in order to achieve reclamation to the approved post-mining land use. Removal of onsite topsoil and topsoil substitute material removal, when submitted in the reclamation plan, shall be performed prior to any mining activity associated with any specific phase of the mining operation.
  - (2) Volume. The operator shall obtain the volume of soil required to perform final reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining topsoil or substitute material as needed to make up the volume of topsoil as specified in the reclamation plan approved pursuant to this chapter.
  - (3) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the reclamation plan approved pursuant to this chapter, either be used in contemporaneous reclamation or stored in an environmentally acceptable manner. The location of stockpiled

topsoil or topsoil substitute material shall be chosen to protect the material from erosion or further disturbance or contamination. Runoff water shall be diverted around all locations in which topsoil or topsoil substitute material is stockpiled.

(e) *Final grading and slopes.*

- (1) All areas affected by mining shall be addressed in the approved reclamation plan, pursuant to this chapter, to provide a stable and safe condition consistent with the post-mining land use is achieved. The reclamation plan may designate highwalls or other un-mined and undisturbed natural solid bedrock as stable and safe and not in need of reclamation, or designate other areas affected by mining, including slopes comprised of unconsolidated materials that exceed a 3:1 slope, whether or not graded, as stable and safe. For slopes designated as stable under this subsection, the regulatory authority may require that either: a site-specific engineering analysis be performed by a registered professional engineer to demonstrate that an acceptable slope stability factor is attainable at a steeper slope, or the operator perform a field test plot demonstration, to demonstrate that a stable and safe condition will be achieved and that the post-mining land use specified in the reclamation plan will not be adversely affected.
  - (2) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be steeper than a 3:1 horizontal to vertical incline, unless found acceptable through one (1) or more of the following: alternative requirements are approved under section 12.5-47; steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or stable slopes can be demonstrated based on site-specific engineering analysis performed by a registered professional engineer. All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute material redistribution to provide optimum adherence between the topsoil or topsoil substitute material and the underlying material.
  - (3) When the approved post-mining land use includes a body of water, the approved final grade at the edge of a body of water shall extend vertically six (6) feet below the lowest seasonal water level. A slope no steeper than 3:1 shall be created at a designated location or locations, depending on the size of the water body to allow for a safe exit.
- (f) *Topsoil redistribution for reclamation.* Topsoil or topsoil substitute material shall be redistributed in accordance with the reclamation plan approved pursuant to this chapter in a manner that minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil or topsoil substitute material redistribution may not be performed during or immediately after a precipitation event until the soils have sufficiently dried.

- (g) *Revegetation and site stabilization.* Except for permanent roads or similar surfaces identified in the reclamation plan approved pursuant to this chapter, all surfaces affected by nonmetallic mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site stabilization shall be in accordance with the approved reclamation plan and shall be performed as soon as practicable after mining activity has permanently ceased in any part of the mine site.
- (h) *Assessing completion of successful reclamation.*
- (1) The criteria for assessing when reclamation is complete and, therefore, when the financial assurance may be released shall be specified in the reclamation plan approved pursuant to this chapter. Criteria to evaluate reclamation success shall be quantifiable.
  - (2) Compliance with the revegetation success standards in the approved reclamation plan shall be determined by:
    - a. On-site inspections by the County of Racine or its agent;
    - b. Reports presenting results obtained during reclamation evaluations including summarized data on revegetation, photo-documentation or other evidence that the criteria approved in the reclamation plan to ascertain success have been met; or
    - c. A combination of inspections and reports.
  - (3) In those cases where the post mining land use specified in the reclamation plan requires a return of the mining site to a pre-mining condition, the operator shall obtain baseline data on the existing plant community for use in the evaluation of reclamation success pursuant to this section.
  - (4) Revegetation success may be determined by:
    - a. Comparison to an appropriate reference area;
    - b. Comparison to baseline data acquired at the mining site prior to its being affected by mining; or
    - c. Comparison to an approved alternate technical standard.
  - (5) Revegetation using a variety of plants indigenous to the area is favored.
- (i) *Intermittent mining.* Intermittent mining may be conducted provided that the possibility of intermittent cessation of operations is addressed in an operator's reclamation permit, no environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation pursuant to section 21-14 is maintained covering all remaining portions of the site that have been affected by nonmetallic mining and that have not been reclaimed.
- (j) *Maintenance.* During the period of the site reclamation, after the operator has stated that reclamation is complete but prior to release of financial assurance, the operator shall perform any maintenance necessary to prevent erosion, sedimentation or environmental pollution,

comply with the standards of this subchapter, or to meet the goals specified in the reclamation plan approved pursuant to this chapter.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Secs. 12.5-27—12.5-40. - Reserved.

### ARTICLE III. - PERMITTING

Sec. 12.5-41. - Nonmetallic mining reclamation permit application.

- (a) *Nonmetallic mining reclamation permit is required.* No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to this chapter, unless the activity is specifically exempted in section 12.5-7 or section 12.5-10.
- (b) *Required submittal.* All operators of nonmetallic mining sites shall apply for a reclamation permit from the County of Racine. All applications for reclamation permits under this section shall be accompanied by the following information:
  - (1) A brief description of the general location and nature of the nonmetallic mine.
  - (2) A legal description of the property on which the nonmetallic mine is located or proposed, including the parcel identification number.
  - (3) The names, addresses, and telephone numbers of all persons or organizations who are owners or lessors of the property on which the nonmetallic mining site is located.
  - (4) The name, address, and telephone number of the person or organization who is the operator.
  - (5) A certification by the operator of his or her intent to comply with the statewide nonmetallic mining reclamation standards established by article II.
  - (6) Any other materials the planning and development department may reasonably require.
- (c) *Reclamation permit application contents.* The operator of any nonmetallic mine site shall submit an application that meets the requirements specified below to the Racine County Planning and Development Department prior to beginning operations.
  - (1) The information required by subsection (a) of this section.
  - (2) The plan review and annual fees required by sections 12.5-69 and 12.5-70.
  - (3) A reclamation plan conforming to section 12.5-42.
  - (4) A certification that the operator will provide, as a condition of the reclamation permit, provide financial assurance as required by section 12.5-43 upon granting of the reclamation permit and before mining begins.

- (5) To avoid duplication, the permit application and submittals required under this subsection may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-42. - Reclamation Plan.

(a) *Reclamation plan required.* All operators who conduct or plan to conduct nonmetallic mining shall submit to the Racine County Planning and Development Department a reclamation plan that meets the following requirements and the reclamation standards of article II.

- (1) Site information. The reclamation plan shall include information sufficient to describe the existing natural and physical conditions of the site, including, but not limited to:
  - a. Maps of the nonmetallic mining site including the general location, property boundaries, the aerial extent, geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the location of surface waters and the existing drainage pattern, the approximate elevation of ground water, as determined by existing hydrogeologic information. In specific instances where existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement the information with the opinion of a licensed professional geologist or hydrologist.
  - b. Topsoil or topsoil substitute material required to support revegetation needed for reclaiming the site to the approved post-mining land use can be identified using Racine County soil surveys or other available information, including that obtained from a soil scientist or the University of Wisconsin soil science extension agent or other available information resources.
  - c. Information available to the mine operator on biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine sites.
  - d. Existing topography as shown on contour maps of the site at two-foot contour intervals.
  - e. Location of manmade features on or near the site.
  - f. For proposed nonmetallic mining sites that include previously mined areas, a plan view drawing showing the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.
- (2) Post-mining land use.
  - a. The reclamation plan shall specify a proposed post-mining land use for the nonmetallic mine site. The proposed post-mining land use shall be consistent with local land use plans, comprehensive plans and local zoning at the time the plan is submitted, unless a

change to the land use plan or zoning is proposed. The proposed post-mining land use shall also be consistent with all applicable local, state, or federal laws in effect at the time the plan is submitted.

- b. Land used for nonmetallic mineral extraction in areas zoned under an exclusive agricultural use ordinance pursuant to W.S.A. § 91.75, shall be restored to agricultural use.
- (3) Reclamation measures. The reclamation plan shall include a description of the proposed reclamation, including methods and procedures to be used and a proposed schedule and sequence for the completion of reclamation activities for various stages of reclamation of the nonmetallic mining site. The following shall be included:
- a. A description of the proposed earthwork and reclamation, including final slope angles, high wall reduction, benching, terracing and other structural slope stabilization measures, and, if necessary, a site-specific engineering analysis performed by a registered professional engineer, as provided by section 12.5-26(e)(1) and (2).
  - b. The methods of topsoil or topsoil substitute material removal, storage, stabilization and conservation that will be used during reclamation.
  - c. A plan or map which shows anticipated topography of the reclaimed site and any water impoundments or artificial lakes needed to support the anticipated future land use of the site.
  - d. A plan or map which shows surface structures, roads and related facilities after the cessation of mining.
  - e. The estimated cost of reclamation for each stage of the project or the entire site if reclamation staging is not planned.
  - f. A revegetation plan which shall include timing and methods of seed bed preparation, rates and kinds of soil amendments, seed application timing, methods and rates, mulching, netting and any other techniques needed to accomplish soil and slope stabilization.
  - g. Quantifiable standards for revegetation adequate to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Standards for revegetation may be based on the percent vegetative cover, productivity, plant density, diversity or other applicable measures.
  - h. A plan and, if necessary, a narrative showing erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize erosion and pollution of surface and groundwater.
  - i. A description of any areas which will be reclaimed on an interim basis sufficient to qualify for the waiver of fees pursuant to subsections 12.5-72(b) and 12.5-72(d), if the regulatory authority decides to release financial assurance for such areas pursuant to subsection 12.5-72(d)(3) as authorized by NR 135.41(2), Wisconsin Administrative Code and release of

financial assurance pursuant to subsection 12.5-72(c)(3), and which will be subsequently disturbed prior to final reclamation. Descriptions shall include an identification of the proposed areas involved, methods of reclamation to comply with the standards in article II and timing of interim and final reclamation.

- j. A description of how the reclamation plan addresses the long-term safety of the reclaimed mining site. The description shall include a discussion of site-specific safety measures to be implemented at the site and include measures that address public safety with regard to adjacent land uses.
- (4) Criteria for successful reclamation. The reclamation plan shall contain criteria for assuring successful reclamation in accordance with subsection 12.5-26(h).
- (5) Certification of reclamation plan. The operator shall provide a signed certification that reclamation will be carried out in accordance with the reclamation plan. If the operator does not own the land, the landowner or lessor, if different from the operator, shall also provide signed certification that they concur with the reclamation plan and will allow its implementation.
- (b) *Existing plans and approvals.* To avoid duplication of effort, the reclamation plan required by subsection 12.5-42(a) may, by reference, incorporate existing plans or materials that meet the requirements of this chapter.
- (c) *Approval of reclamation plan.* The planning and development committee shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing in accordance with subsection 12.5-45(a) for mines that apply for a reclamation permit in conformance with this chapter. Conditional approvals of reclamation plans shall be made according to subsection 12.5-45(d) and denials of reclamation plans shall be made pursuant to section 12.5-46. The operator shall keep a copy of the reclamation plan approved under this subsection at the mine site or, if not practicable, at the operator's nearest place of business.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-43. - Financial assurance.

- (a) *Financial assurance requirements.* All operators of nonmetallic mining sites in the County of Racine shall prepare and submit a proof of financial assurance that meets the following requirements:
  - (1) *Notification.* The regulatory authority shall provide written notification to the operator of the amount of financial assurance required under subsection (3).
  - (2) *Filing.* Following approval of the nonmetallic mining reclamation permit, and as a condition of the permit, the operator shall file a financial assurance within the County of Racine. The financial assurance shall provide that the operator shall faithfully perform all requirements in this chapter, an applicable reclamation ordinance and the reclamation plan. Financial

assurance shall be payable exclusively to the County of Racine. In cases where one or more other regulatory authorities regulate a nonmetallic mining site, all financial assurance shall be made payable to the County of Racine only if it currently has primary regulatory responsibility.

- (3) *Amount and duration of financial assurance.* The amount of financial assurance shall equal as closely as possible the cost to the County of Racine of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan. The amount of financial assurance shall be reviewed periodically by the County of Racine to assure it equals outstanding reclamation costs. Any financial assurance filed with the County of Racine shall be in an amount equal to the estimated cost for reclaiming all sites the operator has under project permits. The County of Racine may accept a lesser initial amount of financial assurance provided that the permittee initiates a process to continuously increase the amount of financial assurance until it is adequate to effect reclamation. An escrow account may be established that is based on production gross sales and serves to provide regular payments to an account that is designed to grow to the amount necessary to guarantee performance of reclamation by the expected time of final reclamation. The period of the financial assurance is dictated by the period of time required to establish the post mining land use declared and approved of in the reclamation plan. This may extend beyond the permit if required to accomplish successful and complete implementation of the reclamation plan.
- (4) *Form and management.* Financial assurance shall be provided by the operator and shall be by a bond or an alternate financial assurance. Financial assurance shall be payable to the County of Racine and released upon successful completion of the reclamation measures specified in the reclamation plan. Alternate financial assurances may include, but are not limited to cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established escrow accounts, demonstration of financial responsibility by meeting net worth requirements, or government securities. Any interest from the financial assurance shall be paid to the operator. Certificates of deposit shall be automatically renewable or other assurances shall be provided before the maturity date. Financial assurance arrangements may include, at the discretion of the planning and development committee, a blend of different options for financial assurance including a lien on the property on which the nonmetallic mining site occurs or a combination of financial assurance methods.
- (5) *Multiple projects.* Any operator who obtains a permit from the County of Racine for two (2) or more nonmetallic mining sites may elect, at the time the second or subsequent site is approved, to post a single financial assurance in lieu of separate financial assurance instruments for each nonmetallic mining site. When an operator elects to post a single



financial assurance in lieu of separate financial assurances for each mining site, no financial assurances previously posted on individual mining sites shall be released until the new financial assurance has been accepted by the County of Racine.

- (6) *Multiple jurisdictions.* In cases where more than one regulatory authority has jurisdiction, a cooperative financial security arrangement may be developed and implemented by the regulatory authorities to avoid requiring the permittee to prove financial assurance with more than one (1) regulatory authority for the same nonmetallic mining site. Financial assurance is required for each site and two (2) or more sites of less than one (1) acre by the same operator, except that governmental units are not required to obtain financial assurance.
- (7) *Certification of completion and release.*
  - a. The operator shall notify the regulatory authority, by filing a notice of completion, at the time that he or she determines that reclamation of any portion of the mining site or the entire site is complete. The County of Racine shall inspect the mine site or portion thereof that was the subject of the notice of completion to determine if reclamation has been carried out in accordance with the approved reclamation plan. The planning and development committee may partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. After determining that reclamation is complete the County of Racine shall issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site.
  - b. The County of Racine shall make a determination of whether or not the certification in subsection a. can be made within sixty (60) days that the request is received.
  - c. The County of Racine may make a determination under this subsection that:
    1. Reclamation is not yet complete;
    2. It is not possible to assess whether reclamation is complete due to weather conditions, snow cover or other relevant factors;
    3. Reclamation is complete in a part of the mine; or
    4. Reclamation is fully complete.
- (8) *Forfeiture.* Financial assurance shall be forfeited if any of the following occur:
  - a. A permit is revoked under section 12.5-67 and the appeals process has been completed.
  - b. An operator ceases mining operations and fails to reclaim the site in accordance with the reclamation plan.
- (9) *Cancellation.* Financial assurance shall provide that it may not be canceled by the surety or other holder or issuer except after not less than a 90-day notice to the County of Racine in writing by registered or certified mail. Not less than thirty (30) days prior to the expiration of

the 90-day notice of cancellation, the operator shall deliver to the County of Racine a replacement proof of financial assurance. In the absence of this replacement financial assurance, all mining shall cease until the time it is delivered and in effect.

- (10) *Changing methods of financial assurance.* The operator of a nonmetallic mining site may change from one method of financial assurance to another. This may not be done more than once a year unless required by an adjustment imposed pursuant to subsection (12). The operator shall give the County of Racine at least sixty (60) days notice prior to changing methods of financial assurance and may not actually change methods without the written approval of the County of Racine.
- (11) *Bankruptcy notification.* The operator of a nonmetallic mining site shall notify the regulatory authority by certified mail of the commencement of voluntary or involuntary proceeding under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within ten (10) days of commencement of the proceeding.
- (12) *Adjustment of financial assurance.* Financial assurance may be adjusted when required by the planning and development department. The planning and development department may notify the operator in writing that adjustment is necessary and the reasons for it. The planning and development department may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.
- (13) *Net worth test.*
  - a. Only an operator that meets the definition of "company" in W.S.A. § 289.41 (1)(b), may use the net worth method of providing financial assurance.
  - b. The operator shall submit information to the regulatory authority in satisfaction of the net worth test requirements of W.S.A. § 289.41 (4). The criteria in W.S.A. §§ 289.41 (6)(b), (d), (e), (f), (g), (h) and (i), shall apply.
  - c. An operator using the net worth test to provide financial assurance for more than one (1) mine shall use the total cost of compliance for all mines in determining the net worth to reclamation cost ratio in accordance with W.S.A. § 289.41 (6).
  - d. Determinations under the net worth test shall be done in accordance with W.S.A. § 289.41 (5).
  - e. In addition, the operator shall submit a legally binding commitment to faithfully perform all compliance and reclamation work at the mine site that is required under this chapter.
- (b) *Private nonmetallic mines.* The operator of any nonmetallic mining site that applies for a reclamation permit in conformance with subsection 12.5-41(c) shall submit the proof of financial assurance required by subsection 12.5-43(a) as specified in the reclamation permit issued to it under this chapter.

(c)

*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.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-44. - Public notice and right of hearing.

(a) *Reclamation plan hearing.* The County of Racine shall provide public notice and the opportunity for a public informational hearing as set forth below:

(1) *Public notice.*

- a. When the County of Racine receives a complete nonmetallic mining reclamation permit application that satisfies subsection 12.5-41(c), it shall publish a public notice of the application no later than thirty (30) days after receipt.
- b. The notice shall briefly describe the mining and reclamation planned at the nonmetallic mining site. The notice shall be published as a class 1 notice pursuant to W.S.A. § 985.07(1), in the official newspaper of the County of Racine. The notice shall mention the opportunity for public hearing pursuant to this section and shall give the locations at which the public may review the application and all supporting materials including the reclamation plan.
- c. Copies of the notice shall be forwarded by the County of Racine to the county or applicable municipal zoning board, the county and applicable local planning organization, the county land conservation officer, and owners of land within three hundred (300) feet of the boundaries of the parcel or parcels of land on which the site is located.

(2) *Hearing.* The County of Racine shall provide for an opportunity for a public informational hearing on an application or request to issue a nonmetallic mining reclamation permit as follows.

- a. If it conducts a zoning related hearing on the nonmetallic mine site, the County of Racine shall provide the opportunity at this hearing to present testimony on reclamation-related matters. This opportunity shall fulfill the requirement for public hearing for a nonmetallic mining reclamation permit required by this section. The planning and development committee shall consider the reclamation-related testimony in the zoning-related hearing in deciding on a permit application pursuant to this chapter.
- b. 1. If there is no opportunity for a zoning related hearing on the nonmetallic mine site as described in subsection a. above, opportunity for public hearing required by this section shall be provided as follows. Any person residing within, owning property within, or whose principal place of business is within three hundred (300) feet of the boundary of the parcel or parcels of land in which the nonmetallic mining site is

located or proposed may request a public informational hearing. The planning and development committee shall hold a public hearing if requested by any of these persons within thirty (30) days of the actual date of public notice under subsection 12.5-44(a)(1). This public informational hearing shall be held no sooner than thirty (30) days nor later than sixty (60) days after being requested. The hearing shall be conducted as an informational hearing for the purpose of explaining and receiving comment from affected persons on the nature, feasibility, and effects of the proposed reclamation. The hearing shall be before the planning and development committee of Racine County at its regularly scheduled public hearing. The procedures used for the planning and development committee's regularly scheduled public hearing shall apply.

2. The subject matter and testimony at this informational hearing shall be limited to reclamation of the nonmetallic mine site.

(b) *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 section 12.5-45(b).

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-45. - Issuance of a nonmetallic mining reclamation permit.

No person may engage in nonmetallic mining or nonmetallic mining reclamation in Racine County without first obtaining a reclamation permit issued under this section, except for nonmetallic mining sites that are exempt from this chapter under section 12.5-7 or section 12.5-10.

(a) *Permit required.* Applications for reclamation permits for nonmetallic mining sites that satisfy subsection 12.5-41(c) shall be issued a reclamation permit or otherwise acted on as provided below.

(1) Unless denied pursuant to section 12.5-46, the County of Racine shall approve in writing a request that satisfies the requirements of subsection 12.5-41(c) to issue a nonmetallic mining reclamation permit for the proposed nonmetallic mine.

(2) The County of Racine may not issue an approval without prior or concurrent approval of the reclamation plan that meets the requirements of section 12.5-42. The regulatory authority may issue a reclamation permit subject to conditions in subsection 12.5-45(d) if appropriate. The permit decision shall be made no sooner than thirty (30) days nor later than ninety (90) days following receipt of the complete reclamation permit application and reclamation plan pursuant to this subchapter, unless a public hearing is held pursuant to section 12.5-44. If a public hearing is held, the regulatory authority shall issue the reclamation permit, subject to conditions pursuant to subsection 12.5-45(d) if appropriate, or shall deny the permit as provided in section 12.5-46, no later than sixty (60) days after completing the public hearing.

(3) Permits issued pursuant to this subsection shall require compliance with a reclamation plan that has been approved and satisfies the requirements of section 12.5-42 and provision by the applicant of financial assurance required under section 12.5-43 and payable to the County of Racine prior to beginning mining.

(b) *Automatic permit for local transportation-related mines.*

(1) The County of Racine shall automatically issue an expedited permit under this subsection to any borrow site that:

- a. Will be opened and reclaimed under contract with a municipality within a period not exceeding thirty-six (36) months;
- b. Is a nonmetallic mine which is intended to provide stone, soil, sand or gravel for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or other transportation facility under contract with the municipality;
- c. Is regulated and will be reclaimed under contract with the municipality in accordance with the requirements of the Wisconsin Department of Transportation concerning the restoration of nonmetallic mining sites;
- d. Is not a commercial source;
- e. Will be constructed, operated and reclaimed in accordance with applicable zoning requirements, if any; and
- f. Is not otherwise exempt from the requirements of this chapter under subsection 12.5-7(b)(10).

(2) In this subsection, "municipality" has the meaning defined in W.S.A. § 299.01(8).

(3) Automatic permits shall be issued under this subsection in accordance with the following provisions:

- a. The applicant shall notify the County of Racine of the terms and conditions of the contract with respect to reclamation of the proposed borrow site.
- b. The applicant shall provide evidence to the County of Racine to show that the borrow site and its reclamation will comply with applicable zoning requirements, if any.
- c. The County of Racine shall accept the contractual provisions incorporating requirements of the Wisconsin Department of Transportation in lieu of a reclamation plan under section 12.5-42.
- d. The County of Racine shall accept the contractual provisions in lieu of the financial assurance requirements in section 12.5-43.
- e. The public notice and hearing provisions of section 12.5-44 do not apply to nonmetallic mining sites that are issued automatic permits under this subsection.
- f.

Mines permitted under this subsection shall pay an annual fee to the County of Racine as provided in section 12.5-70, but shall not be subject to the plan review fee provided in section 12.5-69. The total annual fee, including the share of the Department of Natural Resources, shall not exceed the amount in Table 2, NR 135.39.

- g. The County of Racine shall issue the automatic permit within seven (7) days of the receipt of a complete application.
  - h. If the borrow site is used to concurrently supply materials for other than the local transportation project, the automatic permitting in this subsection still applies provided the site will be reclaimed under a contractual obligation with the municipality in accordance with the Wisconsin Department of Transportation requirements.
  - i. Notwithstanding section 12.5-68, the operator of a borrow site under this subsection is required to submit only the information in an annual report necessary to identify the borrow site and to determine the applicable annual fee.
- (c) *Expedited review.* Any operator of a nonmetallic mining site may request expedited review of a reclamation permit application under subsection (1) or subsection (2) as follows:
- (1) The operator may submit a request for expedited permit review with payment of the expedited review fee specified in subsection 12.5-69(b). This request shall state the need for such expedited review and the date by which such expedited review is requested.
  - (2) The operator may submit a request for expedited review under this subsection if the applicant requires a reclamation permit to perform services under contract with a municipality. This request for expedited review shall state the need for expedited review and shall include a copy of the applicable sections of the contract and the date by which the expedited review is requested.
  - (3) Following receipt of a request under this subsection, the County of Racine shall inform the applicant of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the fee paid under subsection (1) shall be returned.
  - (4) Expedited review under this subsection shall not waive, shorten, or otherwise affect the public notice and right of hearing pursuant to section 12.5-44. This subsection does not impose an obligation upon the regulatory authority to act upon a permit application under this subsection by a specific date.
- (d) *Permit conditions.* Any decision under this section may include conditions as provided below:
- (1) The County of Racine may issue a reclamation permit or approve a reclamation plan subject to general or site-specific conditions if needed to assure compliance with the nonmetallic mining reclamation requirements of this chapter. The approvals may not

include conditions that are not related to reclamation.

- (2) One required condition of the issued permit shall be that the new mine obtain financial assurance pursuant to section 12.5-43 before beginning mining.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-46. - Permit denial.

An application for a nonmetallic mining reclamation permit shall be denied as set forth below:

- (1) An application to issue a nonmetallic mining reclamation permit shall be denied, within the time frame for permit issuance specified in section 12.5-45, if the planning and development committee finds any of the following:
  - a. The applicant has, after being given an opportunity to make corrections, failed to provide to the County of Racine an adequate permit application, reclamation plan, financial assurance or any other submittal required by Chapter NR 135, Wisconsin Administrative Code or this chapter.
  - b. The proposed nonmetallic mining site cannot be reclaimed in compliance with the reclamation standards contained this chapter, Chapter NR 135, Wisconsin Administrative Code or Wis. Stats. subchapter I. of chapter 295.
  - c.
    1. The applicant, or its agent, principal or predecessor has, during the course of nonmetallic mining in Wisconsin within ten (10) years of the permit application or modification request being considered shown a pattern of serious violations of this chapter or of federal, state or local environmental laws related to nonmetallic mining reclamation.
    2. The following may be considered in making this determination of a pattern of serious violations:
      - i. Results of judicial or administrative proceedings involving the operator or its agent, principal or predecessor.
      - ii. Suspensions or revocations of nonmetallic mining reclamation permits pursuant to this chapter, other reclamation ordinances or Chapter NR 135, Wisconsin Administrative Code.
      - iii. Forfeitures of financial assurance.
  - d. A denial under this subsection shall be in writing and shall contain documentation of reasons for denial.
- (2) A decision to deny an application to issue a reclamation permit may be reviewed under section 12.5-51.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-47. - Alternative requirements.

- (a) *Scope of alternative requirements approvable.* An operator of a nonmetallic mining site may request an alternative requirement to the reclamation standard established in section 12.5-26. The Racine County Board of Adjustment may approve an alternative requirement to the reclamation standards established in this chapter if the operator demonstrates and the board of adjustment finds that all of the following criteria are met:
- (1) The nonmetallic mining site, the surrounding property, or the mining plan or reclamation plan has a unique characteristic that requires an alternative requirement.
  - (2) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result unless the alternative requirement is approved.
  - (3) Reclamation in accordance with the proposed alternative requirement will achieve the planned post-mining land use and long term site stability in a manner that will not cause environmental pollution or threaten public health, safety or welfare.
- (b) *Procedures.*
- (1) The operator of a nonmetallic mining site requesting an alternate requirement in subsection 12.5-47(a) shall demonstrate all the criteria in subsection 12.5-47(a). This shall be submitted in writing to the board of adjustment.
  - (2) The procedure for the board of adjustment's review of request shall be as set forth in W.S.A. § 59.694, and section 20-31, et. seq., of the Racine County Code of Ordinances.
  - (3) A request for an alternative requirement may be incorporated as part of an application to issue or modify a nonmetallic mining reclamation permit.
  - (4) A hearing shall be held in accordance with section 20-37 of the Racine County Code of Ordinances.
- (c) *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.
- (d) *Notice to Wisconsin Department of Natural Resources.* The County of Racine shall provide notice to the Wisconsin Department of Natural Resources as set forth in this subsection. Written notice shall be given to the Wisconsin Department of Natural Resources at least ten (10) days prior to any public hearing held under section 12.5-47(b) on a request for an alternate requirement under this section. A copy of any written decision on alternative requirements shall be submitted to the Wisconsin Department of Natural Resources within ten (10) days of issuance.

(Ord. No. 2001-8, 5-22-01)



Sec. 12.5-48. - Permit duration.

- (a) 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 subsection 12.5-92(b).
- (b) If the mine operator is not the landowner, the reclamation permit duration shall not exceed the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent lessee pursuant to section 12.5-49.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-49. - Permit transfer.

A nonmetallic mining reclamation permit issued under this chapter shall be transferred to a new owner or operator upon satisfaction of the following conditions:

- (1) A nonmetallic mining reclamation permit may be transferred to a new operator upon submittal to the County of Racine of proof of financial assurance and a certification in writing by the new permit holder that all conditions of the permit will be complied with.
- (2) The transfer is not valid until financial assurance has been submitted by the new operator and accepted by the planning and development department and the department makes a written finding that all conditions of the permit will be complied with. The previous operator shall maintain financial assurance until the new operator has received approval and provided the financial assurance under this section.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-50. - Previously permitted sites.

For any nonmetallic mining site which had a reclamation permit previously issued by another regulatory authority pursuant to Chapter NR 135, Wisconsin Administrative Code that becomes subject to reclamation permitting authority of the County of Racine the terms and conditions of the previously-issued municipal reclamation permit shall remain in force until modified by the County of Racine pursuant to subsection 12.5-66(a).

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-51. - Review.

Any permitting decision or action made by the County of Racine under this chapter may be reviewed as set forth in this section. Notwithstanding W.S.A. §§ 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1)(b), any person who meets the requirements of W.S.A. § 227.42(1), may obtain a contested case hearing under

W.S.A. § 68.11, on the County of Racine's decision to issue, deny or modify a nonmetallic mining reclamation permit.

(Ord. No. 2001-8, 5-22-01)

Secs. 12.5-52—12.5-65. - Reserved.

#### ARTICLE IV. - ADMINISTRATION

Sec. 12.5-66. - Permit modification.

- (a) *By the County of Racine.* A nonmetallic mining reclamation permit issued under this chapter may be modified by the planning and development committee if it finds that, due to changing conditions, the nonmetallic mining site is no longer in compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter. Such modification shall be by an order modifying the permit in accordance with section 12.5-92. This modifying order may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance or other information needed to ensure compliance with Chapter NR 135, Wisconsin Administrative Code or this chapter.
- (b) *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 Racine County Planning and Development Department. The application for permit or plan modification shall be acted on using the standards and procedures of this chapter.
- (c) *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 changes occur to the area to be mined, the nature of the planned reclamation, or other aspects of mining required by the reclamation plan approved pursuant to this chapter. Such application for permit modification shall be acted on using the standards and procedures of this chapter.
- (d) *Review.* All actions by the planning and development committee on permit modifications requested or initiated under this section are subject to review under section 12.5-51.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-67. - Permit suspension and revocation.

- (a) *Grounds.* The planning and development committee may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this chapter if it finds the operator has done any of the following:

- (1) Failed to submit a satisfactory reclamation plan within the time frames specified in this chapter.
  - (2) Failed to submit or maintain financial assurance as required by this chapter.
  - (3) Failed on a repetitive and significant basis to follow the approved reclamation plan.
- (b) *Procedures.* If the Racine County Planning and Development Committee finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in subsection (a), it may issue a special order suspending or revoking such permit as set forth in subsection 12.5-92(b).
- (c) *Consequences.*
- (1) If the Racine County Planning and Development Committee makes any of the findings in section 12.5-67(a), it may suspend a nonmetallic mining reclamation permit for up to thirty (30) days. During the time of suspension, the operator may not conduct nonmetallic mining at the site, except for reclamation or measures to protect human health and the environment as ordered by the regulatory authority pursuant to section 12.5-92.
  - (2) If the Racine County Planning and Development Committee makes any of the findings in subsection 12.5-67(a), it may revoke a nonmetallic mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial assurance it has provided pursuant to this chapter to the County of Racine. The County of Racine may use forfeited financial assurance to reclaim the site to the extent needed to comply with this chapter and the applicable reclamation ordinance.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-68. - Annual operator reporting.

- (a) *Contents and deadline.* Annual reports that satisfy the requirements of this section shall be submitted by the operators of nonmetallic mining sites and be submitted on forms provided by the Racine County Planning and Development Department.
- (1) *Contents.* The annual report required by this section shall include all of the following:
- a. The name and mailing address of the operator.
  - b. The location of the nonmetallic mining site, including legal description, tax key number or parcel identification number if available.
  - c. The identification number of the applicable nonmetallic mining permit, if assigned by the planning and development department.
  - d. The acreage currently affected by nonmetallic mining extraction and not yet reclaimed.
  - e. The amount of acreage that has been reclaimed to date, on a permanent basis and the amount reclaimed on an interim basis.

- f. A plan, map or diagram accurately showing the acreage described in subsections d. and e.
- g. The following certification, signed by the operator:

"I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining reclamation permit and Chapter NR 135, Wisconsin Administrative Code."

- (2) *Deadline.* The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31.
- (3) *When reporting may end.* Annual reports shall be submitted by an operator for all active and intermittent mining sites to the County of Racine for each calendar year until nonmetallic mining reclamation at the site is certified as complete pursuant to subsection 12.5-72(c) or at the time of release of financial assurance pursuant to subsection 12.5-43(a)(7).
- (b) *Inspection in lieu of report.* The County of Racine may, at its discretion, obtain the information required in subsection 12.5-68(a) for a calendar year by written documentation of an inspection it completes during a calendar year, as set forth in this subsection. If the County of Racine obtains and documents the required information, the annual report need not be submitted by the operator. If the County of Racine determines that the operator need not submit an annual report pursuant to this subsection, it shall advise the operator in writing at least thirty (30) days before the end of the applicable calendar year. In that case, the County of Racine shall require the operator to submit the certification required in subsection 12.5-68(a)(1)g.
- (c) *Retention of annual reports.* Annual reports submitted under subsection 12.5-68(a) or inspection records that replace them under subsection 12.5-68(b) shall be retained by the Racine County Planning and Development Department for at least ten (10) years after the calendar year to which they apply. These records, or complete and 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.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

#### Sec. 12.5-69. - Plan review fees.

- (a) *Amount and applicability.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subsection 12.5-41(c) shall submit a non-refundable plan review required by the schedule of fees adopted by the Racine County Board of Supervisors. The fee schedule may be adopted by resolution or through the adoption of the county executive budget. No plan review fee may be assessed under this section for any local transportation-related mining receiving an automatic permit under subsection 12.5-45(b). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to section 12.5-66.

- (b) *Expedited plan review fee.* A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under subsection 12.5-41(c) may obtain expedited reclamation plan review by paying a fee required by the schedule of fees adopted by the Racine County Board of Supervisors. The fee schedule may be adopted by resolution or through the adoption of the county executive budget.
- (c) *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 12.5-70.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-70. - Annual fees.

(a) *Areas subject to fees, procedures, deadline, and amounts.*

- (1) Operators of all nonmetallic mining sites subject to reclamation permits issued under this chapter shall pay annual fees to the County of Racine.
- (2) Fees paid under this section shall be calculated based on the unreclaimed acres of a nonmetallic mining site, as defined below:
  - a. "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 subsection 12.5-43(a)(7). However, the term does not include any areas described in subsection b.
  - b. "Unreclaimed acre" or "unreclaimed acres" does not include:
    1. Those areas where reclamation has been completed and certified as reclaimed under subsection 12.5-43(a)(7).
    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 that are included in an approved nonmetallic mining reclamation plan 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. Those areas within a nonmetallic mining site which have been determined to have been successfully reclaimed on an interim basis in accordance with subsections 12.5-72(b) and (c).
    - 6.

Those areas defined as not included in a nonmetallic mining site under section 12.5-10.

- (3) Fees shall be assessed on active acres only and shall not be assessed on acreage where nonmetallic mining is proposed and approved, but where no nonmetallic mining has yet taken place.
  - (4) Fees assessed pursuant to this section shall be based on unreclaimed acres at the end of the year. 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 12.5-72. Fees shall be paid no later than January 31 for the previous year.
  - (5) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for such portions may be submitted with a request that they be held by the County of Racine pending certification of completed reclamation pursuant to subsection 12.5-43(a)(7). Upon such certification, the County of Racine shall refund that portion of the annual fee that applies to the reclaimed areas. If the County of Racine fails to make a determination under subsection 12.5-43(a)(7) within sixty (60) days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.
  - (6) The amount collected shall equal the Wisconsin Department of Natural Resources' share as described in Table 1, NR 135.39, as adopted by the Racine County Board of Supervisors under separate resolution, the share of the County of Racine as adopted by separate resolution and, if applicable, the reclamation plan review fee likewise adopted.
- (b) *Wisconsin Department of Natural Resources share of fee.*
- (1) Fees paid under this section shall, except where provided in subsection (2), include a share for the Wisconsin Department of Natural Resources equal to the amount specified in NR 135.39, as adopted by the Racine County Board of Supervisors by separate resolution.
  - (2) For nonmetallic mining sites at which no nonmetallic mining has taken place during a calendar year, the share for the Wisconsin Department of Natural Resources shall be fifteen dollars (\$15.00).
  - (3) The County of Racine shall forward fees collected under this subsection of the Wisconsin Department of Natural Resources by March 31.
- (c) *The County of Racine's share of fee.* Fees paid under this section shall also include an annual fee due to Racine County, which shall be required by the schedule of fees adopted by the Racine County Board of Supervisors. The fee schedule may be adopted by resolution or through the adoption of the county executive budget.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-71. - Regulatory reporting and documentation.

- (a) *Reporting.* The County of Racine shall send an annual report to the Wisconsin Department of Natural Resources by March 31 for the previous calendar year. The reports shall include the following information for the previous year's nonmetallic mining reclamation program:
- (1) The total number of nonmetallic mining reclamation permits in effect.
  - (2) The number of new permits issued within the jurisdiction of the County of Racine.
  - (3) The number of acres approved for nonmetallic mining and the number of acres newly approved in the previous year.
  - (4) The number of acres being mined or unreclaimed acres.
  - (5) The number of acres that have been reclaimed and have had financial assurance released pursuant to subsection 12.5-43(a)(7).
  - (6) The number of acres that are reclaimed and awaiting release from the financial assurance requirements of this subchapter pursuant to subsections 12.5-72(a) and (b).
  - (7) The number and nature of alternative requirements granted, permit modifications, violations, public hearings, and enforcement actions, penalties that have been assessed and bond or financial assurance forfeitures.
- (b) *Documentation.* The County of Racine shall, to the best of its ability, maintain the information set forth below, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the County of Racine's reclamation program pursuant to Chapter NR 135, Wisconsin Administrative Code:
- (1) Documentation of compliance with Chapter NR 135, Wisconsin Administrative Code and this chapter.
  - (2) The procedures employed by the County of Racine regarding reclamation plan review, and the issuance and modification of permits.
  - (3) The methods for review of annual reports received from operators.
  - (4) The method and effectiveness of fee collection.
  - (5) Procedures to accurately forward the Wisconsin Department of Natural Resources portion of collected fees in a timely fashion.
  - (6) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.
  - (7) Responses to citizen complaints.
  - (8) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.
  - (9) The maintenance and availability of records.
  - (10)

The number and type of approvals for alternative requirements issued pursuant to section 12.5-47.

- (11) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to subsection 12.5-43(a)(7).
- (12) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the County of Racine to implement its nonmetallic mining reclamation program under this chapter.
- (13) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.
- (14) Any other performance criterion necessary to ascertain compliance with Chapter NR 135, Wisconsin Administrative Code.

(Ord. No. 2001-8, 5-22-01; Ord. No. 2007-6, 5-22-07)

Sec. 12.5-72. - Completed reclamation—Reporting, certification and effect.

- (a) *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. The operator shall submit an as-built survey along with such certification.
- (b) *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 subsection (a).
- (c) *Certification of completed reclamation.* The County of Racine shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within sixty (60) days of receipt, and make a determination in writing in accordance with subsection 12.5-43(a)(7)c. If it is determined that interim or final reclamation is complete, including revegetation as specified in a reclamation plan that conforms with section 12.5-42, the County of Racine shall issue the mine operator a written certificate of completion.
- (d) *Effect of completed reclamation.* If reclamation is certified by the County of Racine as complete under subsection (c) for part or all of a nonmetallic mining site, then:
  - (1) No fee shall be assessed under section 12.5-70 for the area so certified.
  - (2) The financial assurance required by section 12.5-43 shall be released or appropriately reduced in the case of completion of reclamation for a portion of the mining site.
  - (3) For sites that are reported as interim reclaimed under subsection (b) and so certified under subsection (c), financial assurance for reclaiming the certified area may be reduced.
- (e)



*Effect of inaction following report of completed reclamation.* If no written response as required by subsection (c) for an area of the mine site reported as reclaimed or interim reclaimed is given within sixty (60) days of receiving such request, any annual fee paid to the County of Racine for it under section 12.5-70 shall be refunded.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-73. - Permit termination.

When all final reclamation required by a reclamation plan conforming to section 12.5-42 and required by this chapter is certified as complete pursuant to subsections 12.5-43(a)(7) and 12.5-72(c), the County of Racine shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

(Ord. No. 2001-8, 5-22-01)

Secs. 12.5-74—12.5-90. - Reserved.

ARTICLE V. - ENFORCEMENT

Sec. 12.5-91. - Right of entry and inspection.

For the purpose of ascertaining compliance with the provisions of W.S.A. Subchapter I of Chapter 295, Chapter NR 135, Wisconsin Administrative Code, or this chapter, any authorized officer, agent, employee or representative of the County of Racine may inspect any nonmetallic mining site subject to this chapter as provided below:

- (1) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized officer, employee or agent of the County of Racine or the Wisconsin Department of Natural Resources who presents appropriate credentials to inspect the site for compliance with the nonmetallic mining reclamation permit, this chapter, Chapter NR 135, Wisconsin Administrative Code or W.S.A. subchapter I of Ch. 295.
- (2) Any person who enters the site under this right of inspection shall obtain training and provide their own safety equipment needed to comply with any federal, state or local laws or regulations controlling persons on the nonmetallic mining site.

(Ord. No. 2001-8, 5-22-01)

Sec. 12.5-92. - Orders and citations.

- (a) *Enforcement orders.* The County of Racine may issue orders as set forth in W.S.A. § 295.19(1)(a), to enforce W.S.A. Subchapter I of Chapter 295, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by section 12.5-42 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 12.5-42 and a permit issued under this chapter shall be considered a violation of W.S.A. Subchapter I of Chapter 295, and Chapter NR 135, Wisconsin Administrative Code.
- (b) *Special orders.* The County of Racine may issue a special order as set forth in W.S.A. §§ 295.19(1)(b) and (c), suspending or revoking a nonmetallic mining reclamation permit pursuant to section 12.5-67 or directing an operator to immediately cease an activity regulated under W.S.A. Subchapter I of Chapter 295, Chapter NR 135, Wisconsin Administrative Code or this chapter until the necessary plan approval is obtained.
- (c) *Review of orders.* A person holding a reclamation permit who is subject to an order pursuant this section shall have the right to review the order in a contested case hearing under W.S.A. § 68.11, notwithstanding the provisions of W.S.A. §§ 68.001, 68.03 (8) and (9), 68.06 and 68.10(1)(b).
- (d) *Citations.* The County of Racine may issue a citation under W.S.A. § 66.119, and § 5.1, et seq., of the Racine County Code of Ordinances to collect forfeiture to enforce W.S.A. Subchapter I of Chapter 295, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by section 12.5-42 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.
- (e) *Enforcement.* The County of Racine may submit any order issued under section 12.5-92 to abate violations of this chapter to a district attorney, corporation counsel, or the attorney general for enforcement. The district attorney, corporation counsel, or the attorney general may enforce those orders.

(Ord. No. 2001-8, 5-22-01)

#### Sec. 12.5-93. - Penalties.

Any violation of W.S.A. Subchapter I of Chapter 295, Chapter NR 135, Wisconsin Administrative Code, this chapter, a permit issued pursuant to this chapter or a reclamation plan required by section 12.5-42 and a permit issued under this chapter may result in forfeitures as provided in W.S.A. § 295.19(3), as follows:

(1)

Any person who violates Chapter NR 135, Wisconsin Administrative Code or an order issued under section 12.5-92 may be required to forfeit not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) for each violation. Each day of continued violation is a separate offense. While an order issued under section 12.5-92 is suspended, stayed or enjoined, this penalty does not accrue.

- (2) Except for the violations referred to in subsection (1), any person who violates W.S.A. subchapter I of Ch. 295, Chapter NR 135, Wisconsin Administrative Code, any reclamation plan approved pursuant to this chapter or an order issued pursuant to section 12.5-92 shall forfeit not less than ten (\$10.00) nor more than five thousand dollars (\$5,000.00) for each violation. Each day of violation is a separate offense. While an order issued under section 12.5-92 is suspended, stayed or enjoined, this penalty does not accrue.

(Ord. No. 2001-8, 5-22-01)