

ENROLLED ORDINANCE 162-16

AMEND WAUKESHA COUNTY CODE OF ORDINANCES BY UPDATING
NONMETALLIC MINING RECLAMATION ORDINANCE TO
REFLECT CHANGES TO ADMINISTRATIVE RULE NR 135

WHEREAS Subchapter I of Chapter 295 Wisconsin Statutes and Wisconsin Administrative Code NR 135 require every county in the state to adopt and enforce a Nonmetallic Mining Reclamation Ordinance, and

WHEREAS on July 24, 2001 the Waukesha County Board adopted Enrolled Ordinance #156-22, establishing the Waukesha County Nonmetallic Mining Reclamation Ordinance, and

WHEREAS on June 28, 2006 the Wisconsin Natural Resources Board adopted revisions to Administrative Code NR 135 to reflect the maturation of the nonmetallic mining reclamation program administration and clarify language and refine procedures as a result of program experience, and

WHEREAS the revisions to Administrative Code NR 135 became effective on December 1, 2006 and requires all regulatory authorities to revise existing nonmetallic mine reclamation ordinances to remain consistent with the updated NR 135, and

WHEREAS the Department of Parks and Land Use, prepared a rewrite of the previously adopted Nonmetallic Mining Reclamation Ordinance that complies with the requirements of NR 135 and offered it for review and comment to the Mineral Extraction Advisory Committee on April 26, 2007.

THE COUNTY BOARD OF SUPERVISORS OF WAUKESHA COUNTY HEREBY
ORDAINS that:

SECTION 1. Section 14-706 is repealed and recreated to read as follows:

(a) The requirements and standards of this ordinance apply to all operators of nonmetallic mining sites within Waukesha County that conduct any mining activity on or after August 1, 2001, except for the following:

1. those sites that meet at least one of the exemption criteria under Sec. 14-707; or
2. those sites where the majority of the site is located within a city, village or town that has adopted similar ordinance provisions pursuant to § 295.14 Wis. Stats, and Section NR 135.32(2), Wisconsin Administrative Code.

(b) The requirements of this ordinance apply to nonmetallic mining conducted by or on behalf of the State of Wisconsin, by or on behalf of a municipality or for the benefit or use of the state or any state agency, board, commission or department, except for the waiver of financial assurance in Sec. 14-713.

SECTION 2. Section 14-709 subsections (g) and (q) are repealed in their entirety. Section 14-709(w) is repealed and recreated to read as follows:

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 Sec. 14-724(b). However the terms unreclaimed acre or unreclaimed acres do not include any areas described below:

1. Those areas where reclamation has been completed and certified as reclaimed under Sec. 14-724(b).
2. Those areas previously affected by nonmetallic mining but which are not used for nonmetallic mining after August 1, 2001.
3. Those portions of nonmetallic mining sites which are included in a nonmetallic mining reclamation plan approved pursuant to this ordinance but are not yet affected by nonmetallic mining.
4. Areas previously mined but used after August 1, 2001 for a non-mining activity, such as stockpiling of materials, provided the stockpiles are used for an on-site industrial process, such as an asphalt plant, concrete batch plant, block and tile operation or other industry that uses products produced from nonmetallic mining.
5. For purposes of fees under Sec. 14-722, those areas within a nonmetallic mining site which the county has determined to have been successfully reclaimed on an interim basis in accordance with Sec. 14-724(b).

SECTION 3. The following newly defined terms shall be created as follows and inserted alphabetically Section 14-709:

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

Licensed professional geologist means a person who is licensed as a professional geologist pursuant to ch. 470, Wis. Stats.

Licensed professional hydrologist means a person who is licensed as a professional hydrologist pursuant to ch. 470, Wis. Stats.

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

SECTION 4. Section 14-710(j) is repealed and recreated to read as follows:

1. All areas affected by mining shall be addressed in the reclamation plan approved pursuant to this ordinance to provide that a stable and safe condition consistent with the post mining land use is achieved. The reclamation plan may designate highwalls or other unmined 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 county may require that either: i) 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 ii) 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 or more of the following: i) alternative requirements are approved under 14-716; ii) steeper slopes are shown to be stable through a field plot demonstration approved as part of an approved reclamation plan; or iii) 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 the optimum adherence between the topsoil or the 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 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.

SECTION 5. Section 14-711(a) is repealed and recreated to read as follows:

(a) Permit Application Required. No person may engage in nonmetallic mining or in nonmetallic mining reclamation without possessing a nonmetallic mining reclamation permit issued pursuant to this ordinance unless the activity is specifically exempted in 14-706 or 14-707. All applications for reclamation permits under this section shall be submitted on a form provided by the county, including 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 tax parcel identification number(s).

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(s) of the person(s) or organization serving as the operator and the primary contact for the review of reclamation plans.

5. Indication if the applicant is applying for an automatic permit in accordance with sub. (b).
6. Indication if the applicant is requesting an expedited review in accordance with sub. (d).
7. A certification by the operator of his or her intent to comply with the nonmetallic mining reclamation standards established under Sec.14-710, except for permits applied for under sub. (b).

SECTION 6. Section 14-711 (b) is repealed in its entirety.

SECTION 7. Section 14-711 (c) is repealed and recreated to read as follows:

Required Submittals. The operator of any nonmetallic mining site that plans to engage in mining shall submit all the items specified below prior to commencing nonmetallic mining activities:

1. A completed application form, in accordance with sub. (a);
2. The plan review and annual fees required by Sec. 14-721 and Sec. 14-722 respectively;
3. A reclamation plan conforming to Sec. 14-712; and
4. A certification, on a form provided by the county, and signed by the operator that he or she will provide, as a condition of the reclamation permit, financial assurance, as required by Sec. 14-713.

SECTION 8. Section 14-712(a) is repealed and recreated as follows:

(a) Reclamation Plan Requirements. All operators of nonmetallic mining sites subject to this ordinance shall prepare and submit a reclamation plan that meets the requirements of this section.

1. Plan Standards. All reclamation plans shall comply with the standards of Sec. 14-710. All plan view maps shall be at a scale of 1 inch equals no more than 100 feet, or at a scale approved by the county. Cross-section and profile drawings shall be of sufficient scale and detail to clearly show the required elements described below. All maps shall meet national map accuracy standards for the scale they are drawn and meet county standards for horizontal and vertical control.

2. Existing 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. Plan view maps and /or cross-section drawings of the nonmetallic mining site including the general location (at a smaller scale), property boundaries and dimensions, the areal extent, delineation, labeling and measurement (in acres) of the general use of each area on the site (see "nonmetallic mine" definition), the geologic composition and depth of the nonmetallic mineral deposit, the distribution, thickness and type of topsoil the approximate elevation of ground water, the location of surface waters, existing drainage patterns, and existing topography, with spot elevations and contours at 2 foot contour intervals, except where slope is greater than 30%, where the contour interval may be

5 feet or other contour interval as approved by the county. In specific instances where the existing hydrogeologic information is insufficient for purposes of the reclamation plan, the applicant may supplement such information with the opinion of a professional geologist or hydrogeologist.

B. Delineate from existing maps, biological resources, plant communities, and wildlife use at and adjacent to the proposed or operating mine site. These maps shall also delineate existing shorelands, floodplains, wetlands, and primary environmental corridors, as defined by the county. C. Location of manmade features on or near the site.

D. For proposed nonmetallic mine sites that include previously mined areas, the plan view map or cross-section drawing under par. A. must also show the location and extent of land previously affected by nonmetallic mining, including the location of stockpiles, wash ponds and sediment basins.

3. 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 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 s. 91.75, Stats., shall be restored to agricultural use.

4. 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 14-710(j)(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 view 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 square yards or acres and cost, based on

average costs, to complete the 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, matting, and any other techniques needed to accomplish soil and slope stabilization.

G. Quantifiable standards, in accordance with Sec. 14-710, for revegetation to show that a sustainable stand of vegetation has been established which will support the approved post-mining land use. Other 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 and explaining erosion control measures to be employed during reclamation activities. These shall address how reclamation activities will be conducted to minimize soil 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 Sec.14-724(c) 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 Sec.14-710 and sequence 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 use.

Note: Safety measures include: visual warnings, physical barriers, slope modifications such as reclamation blasting, scaling of the rock face, or creation of benches. Other measures may be employed if found to be equivalent by a registered professional engineer.

5. Plan Criteria for Success. The reclamation plan shall contain criteria for assuring successful reclamation in accordance with Sec.14-710(c).

6. Certification of Reclamation Plan. The operator shall provide the county a signed certification that reclamation will be carried out in accordance with the proposed reclamation plan. The operator or landowner shall also provide the county with written documentation that the landowner or lessor, if different from the operator or owner, concurs with the reclamation plan and will allow its implementation.

SECTION 9. Section 14-714(a) is repealed and recreated to read as follows:

(a) Public Notice Requirements.

1. Required. The requirements of public notice under sub. (b) shall only apply to the following nonmetallic mining permit applications:
 - A. Those for all new nonmetallic mines, and
 - B. Those for permit modifications where the changes are substantial in their scope or impact on the landscape, as determined by the county.
2. Not Required. The public notice requirements under sub. (b) shall not apply to any permit application for a mine under Sec. 14-711(b) (for local transportation-related mines).

SECTION 10. Section 14-714(b) is repealed and recreated to read as follows:

(b) Public Notice Procedure. Subject to the applicability provisions under sub. (a), the county shall, prior to issuing a permit under Sec. 14-715, provide public notice and the opportunity for a public informational hearing as described below:

1. Public Notice.
 - A. Within 30 days after the county has received all the application materials under Sec. 14-711, the county shall publish a class 1 public notice in the official newspaper of the county.
 - i. The notice shall do all of the following: Provide a brief description and location of the proposed nonmetallic mining and reclamation planned;
 - ii. Announce the date, time and place of any scheduled zoning hearing, where the public is offered the opportunity to submit comments to the county concerning the reclamation plan. If no zoning hearing is scheduled, the notice shall explain the procedures for requesting a public hearing in accordance with par. (2); and
 - iii. Provide the location and times that the public may review the reclamation plans that have been prepared to satisfy the requirements of this ordinance.

SECTION 11. Section 14-715(a) is repealed and recreated to read as follows:

(a) Permit Required. No person may engage in nonmetallic mining or nonmetallic mining reclamation in Waukesha County without first obtaining a reclamation permit issued pursuant to this ordinance. All applications for permits under this ordinance shall be processed by the county in accordance with the applicable procedures described below.

SECTION 12. Section 14-715(b) is repealed in its entirety and 14-715(c), which shall be renumbered as (b), is repealed and recreated as follows:

Permit Application Review Process. Permit applications that are received under the requirements of Sec. 14-711 shall be reviewed and acted on in accordance with the following procedures:

1. Within 90 days of receipt of all the required application materials the county shall:
 - A. Determine if the applicable requirements of this

ordinance have been met;

B. Determine if there is a need for additional information, or changes to the reclamation plans or other materials, to comply with this ordinance;

C. Notify the applicant of the results of the determinations under par. A through B, including what additional information or changes are needed. Notification shall be in written or electronic form, unless otherwise waived by the applicant.

2. If the county determines that all of the requirements of this ordinance have been met, and no public notice is required under Sec. 14-714(a), all the submittals shall be approved by the county and a permit shall be issued upon compliance with the financial assurance provisions under Sec. 14-713.

3. If the county approves all the materials submitted, and determines that a public informational hearing is required under Sec. 14-714(a) the county shall publish a public notice in accordance with Sec. 14-714(b).

4. Any resubmittals under this subsection shall be subject to the procedures in par. (1) through (3).

5. The county may approve the reclamation plan and other submittals with conditions that it deems necessary to ensure compliance with the requirements of this ordinance. The approvals may not include conditions that are not related to reclamation.

6. The county may deny a permit application in accordance with sub. (d).

SECTION 13. Section 14-720 (a)(2) is repealed and recreated to read as follows:

Deadline. The annual report shall cover activities on unreclaimed acres for the previous calendar year and be submitted by March 1.

SECTION 14. Section 14-721 (a) is repealed and recreated to read as follows:

(a) Amount and Applicability. All permit applicants under Sec. 14-711 shall submit a non-refundable plan review fee in accordance with the fee schedule shown in Table 3, Section NR 135.39(5), Wisconsin Administrative Code, unless modified by the county through the annual budget process. No other permit applicants under this ordinance shall be subject to this fee. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to Sec. 14-718.

SECTION 15. Section 14-722(a) is repealed and recreated to read as follows:

(a) Areas Subject to Fees, Procedures and Deadline.

1. General. Operators of all nonmetallic mining sites subject to reclamation permits issued under this ordinance shall pay annual fees to the county. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under sub. (b) and a share for the county under sub. (c).

The county share shall equal as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

2. Areas Subject to Fees. Fees paid under this section shall be calculated by the county based on the number of "unreclaimed acres", as defined in Sec. 14-709, present on a nonmetallic mining site at the end of each calendar year.

3. Procedures and Deadlines. Fees assessed pursuant to this section shall be paid to the county no later than March 1 of the subsequent year.

4. Fees Prior to Reclamation Certification. 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 pending certification of completed reclamation pursuant to Sec. 14-724(b). Upon such certification the county shall refund that portion of the annual fee that applies to the reclaimed areas.

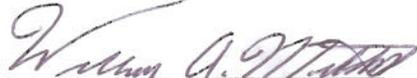
SECTION 16. This ordinance shall be effective upon approval and publication.

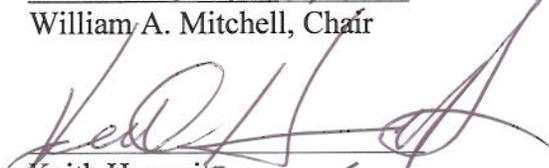
SECTION 17. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Waukesha, Wisconsin, as an addition or amendment thereto and shall be appropriately renumbered to conform to the numbering system contained therein.

SECTION 18. Any code section or part of a section in conflict with this ordinance is hereby repealed and declared null and void and of no effect.

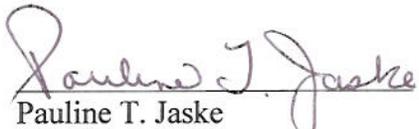
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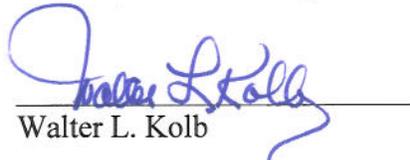
Presented by:
Land Use, Parks, and Environment Committee


William A. Mitchell, Chair


Keith Hammitt


Keith Harenda

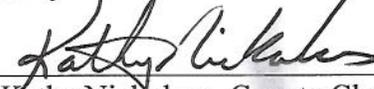

Pauline T. Jaske


Walter L. Kolb

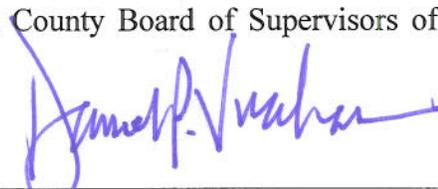

Vera Stroud


Peter M. Wolf

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 6-15-07, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: _____
Vetoed: _____
Date: 6-18-07, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/12/07

(ORD) NUMBER-1620009

1 K. HERRO.....AYE
3 T. ROLFS.....AYE
5 J. MARCHESE.....AYE
7 J. JESKEWITZ.....AYE
9 P. HAUKOHL.....AYE
11 K. HARENDA.....AYE
13 J. MORRIS.....
15 D. SWAN.....AYE
17 J. BEHREND.....AYE
19 W. MITCHELL.....AYE
21 W. KOLB.....AYE
23 J. TORTOMASI.....AYE
25 K. CUMMINGS.....AYE
27 D. PAULSON.....AYE
29 T. BULLERMANN.....AYE
31 V. STROUD.....AYE
33 K. HAMMITT.....AYE
35 P. MEYER.....AYE

2 R. THELEN.....AYE
4 R. HUTTON.....AYE
6 D. BROESCH.....AYE
8 J. DWYER.....AYE
10 S. WOLFF.....AYE
12 T. SCHELLINGER....AYE
14 S. WIMMER.....AYE
16 R. STEVENS.....AYE
18 B. MORRIS.....AYE
20 P. WOLFF.....AYE
22 G. BRUCE.....AYE
24 J. VITALE.....AYE
26 F. RUF.....AYE
28 P. JASKE.....AYE
30 K. NILSON.....AYE
32 P. GUNDRUM.....AYE
34 R. SINGERT.....AYE

TOTAL AYES-34

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-34