

Ordinance No. 2006-13

An Ordinance Relating to Nonmetallic Mining Reclamation

“SEC. 13-1-30 NONMETALLIC MINING RECLAMATION ORDINANCE.

- (a) **Purpose.** The purpose of this Nonmetallic Mining Reclamation Ordinance (Ordinance) is to establish a local program to ensure the effective reclamation of nonmetallic mining sites on which nonmetallic mining takes place in the City of Cedarburg after the effective date of this Ordinance, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter I of Chapter 295, Wisconsin Statutes.
- (b) **Statutory Authority.** This Ordinance is adopted under authority of Section 62.11(3) and 295.14(1), Wisconsin Statutes, and Section NR 135.32, Wisconsin Administrative Code.
- (c) **Restrictions Adopted Under Other Authority.** The purpose of this Ordinance is to adopt and implement the uniform statewide standards for nonmetallic mining required by Section 295.12(1)(a), Stats. and contained in Chapter NR 135, Wisconsin Administrative Code. It is not intended that this Ordinance repeal, abrogate, annul, impair or interfere with any existing rules, regulations, ordinances or permits not concerning nonmetallic mining reclamation previously adopted pursuant to other Wisconsin law.
- (d) **Interpretation.** In their interpretation and application, the provisions of this Ordinance shall be held to be the applicable requirements for nonmetallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by Wisconsin Statutes outside the reclamation requirements for nonmetallic mining sites required by Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this Ordinance is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.
- (e) **Severability.** Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected.
- (f) **Applicability.**
 - (1) **Overall Applicability.** The requirements of this Ordinance apply to all operators of nonmetallic mining sites within the City of Cedarburg operating on or commencing to operate after August 1, 2001 and as provided in Section NR 135.02(1) and (2), Wisconsin Administrative Code except where exempted in **Sec. 13-1-30(f)(2)**.
 - (2) **Exemptions.** This Ordinance does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code.

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- (g) **Administration.** The provisions of this Ordinance shall be administered by the City of Cedarburg.
- (h) **Effective Date.** The provisions of this Ordinance shall take effect on April 14, 2006.
- (i) **Definitions.** All definitions for the purpose of this Ordinance are those contained in Section NR 135.03, Wisconsin Administrative Code.

SEC. 13-1-31 STANDARDS.

- (a) **Standards.** All nonmetallic mining sites subject to this Ordinance shall be reclaimed in conformance with the standards contained in SubOrdinance II of Chapter NR 135, Wisconsin Administrative Code.

SEC. 13-1-32 PERMITTING.

- (a) **Nonmetallic Mining Reclamation Permit Application.**
 - (1) **Required Submittal.** The operator of all nonmetallic mining sites that operate on or after April 14, 2006 shall apply for a reclamation permit from the City of Cedarburg. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(3), Wisconsin Administrative Code.
 - (2) **New Mines.** The operator of any nonmetallic mine site that engages in or plans to engage in nonmetallic mining shall submit an application that meets the requirements of Section NR 135.18(2), Wisconsin Administrative Code and the submittals required under **Sec. 13-1-32(a)(1)** to the City of Cedarburg prior to beginning operations.
- (b) **Reclamation Plan.**
 - (1) **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 Section NR 135.19, Wisconsin Administrative Code.
 - (2) **Existing Plans and Approvals.** To avoid duplication of effort, the reclamation plan required by **Sec. 13-1-32(b)(1)** may, by reference, incorporate existing plans or materials that meet the requirements of this Ordinance.
 - (3) **Approval of Reclamation Plan.** The City of Cedarburg Common Council, following referral to and recommendation from the Plan Commission, shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to **Sec. 13-1-32(e)(3)**. Conditional approvals of reclamation plans shall be made according to **Sec. 13-1-32(e)(3)**, and denials of reclamation plans made according to **Sec. 13-1-32(f)**. The operator shall keep a copy of the reclamation plan required by this section, once approved by the City of Cedarburg under this Ordinance, at the mine site or, if not practicable, at the operator's nearest office or place of business.
- (c) **Financial Assurance.**

- (1) **Financial Assurance Requirements.** All operators of nonmetallic mining sites in the City of Cedarburg shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section NR 135.40, Wisconsin Administrative Code.
- (2) **Existing Mines.** The operator of any nonmetallic mining site that received a permit from the Town of Cedarburg or Ozaukee County shall submit or transfer the financial assurance required by **Sec. 13-1-32(c)(1)** to the City of Cedarburg.
- (3) **Public Nonmetallic Mining.** The financial assurance requirements of this section do not apply to nonmetallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.
- (d) **Public Notice and Right of Hearing.**
 - (1) **New Mines or Existing Mines that have been newly annexed into the City.** The City of Cedarburg shall provide public notice and the opportunity for a public informational hearing as set forth in Section NR 135.20(1) and (2), Wisconsin Administrative Code for any nonmetallic mining site for which a complete reclamation permit application that satisfies **Sec. 13-1-32(a)(1)** is received.
 - (2) **Local transportation-Related Mines.** No public notice or informational hearing is required for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant to **Sec. 13-1-32(e)(4)**.
- (e) **Issuance of a Nonmetallic Mining Reclamation Permit.**
 - (1) **Permit Required.** Every operator of a nonmetallic mining site in the City of Cedarburg who engages in or plans to engage in nonmetallic mining on or after April 14, 2006 shall obtain a reclamation permit issued under this section, except nonmetallic mining sites exempt from this Ordinance as provided in **Sec. 13-1-30(f)(2)**. No person may engage in nonmetallic mining or nonmetallic mining reclamation after April 14, 2006 without a reclamation permit issued pursuant to this Ordinance.
 - (2) **Permit Issuance.** Applicants for reclamation permits for nonmetallic mining sites that satisfy **Sec. 13-1-32(a)(1)** shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21(2), Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms to **Sec. 13-1-32(b)(1)**, and provisions by the applicant of financial assurance that conforms to **Sec. 13-1-32(c)(2)** payable to the City of Cedarburg prior to beginning mining.
 - (3) **Permit Conditions.** Permits issued under this section may include conditions as provided in Section NR 135.21(3), Wisconsin Administrative Code.
 - (4) **Automatic Permit for Local Transportation-Related Mines.** The City of Cedarburg shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally administrated transportation project that meets the criteria in Section NR 135.21(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued

according to the provisions of Section 135.23(1)(b) through (j), Wisconsin Administrative Code.

- (f) **Permit Denial.** An application for a nonmetallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exists.
- (g) **Alternate Requirements**
 - (1) **Scope of Alternative Requirements Approvable.** An operator of a nonmetallic site may request an alternative requirement to any reclamation standard established in **Sec. 13-1-31**. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.
 - (2) **Procedures.** The operator of a nonmetallic mining site requests an alternate requirement in **Sec. 13-1-32(g)(1)** shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. This shall be submitted in writing to the City of Cedarburg Board of Appeals appointed pursuant to Section 62.23, Wisconsin Statutes.
 - (3) **Transmittal of Decision on Request for Alternate Requirements.** The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.
 - (4) **Notice to Wisconsin Department of Natural Resources.** The City of Cedarburg shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3)(a), Wisconsin Administrative Code.
- (h) **Permit Duration.** A nonmetallic mining reclamation permit issued under this Ordinance shall last through operation and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to **Sec. 13-1-34(b)(2)**, or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.
- (i) **Permit Transfer.** A nonmetallic mining reclamation permit issued under this Ordinance shall be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.
- (j) **Permit Transfer Notice.** When a nonmetallic mining permit is proposed to be transferred to a new owner or operator, the permit holder shall notify the City of Cedarburg of such a transfer at least 30 days prior to the transfer to the new owner. Such notice shall be by certified mail.
- (k) **Review.** Any permitting decision or action made by the City of Cedarburg under this Ordinance may be reviewed as set forth in Section NR 135.30, Wisconsin Administration Code.

SEC. 13-1-33 ADMINISTRATION

- (a) **Permit Modification.**
 - (1) **By the City of Cedarburg.** A nonmetallic mining reclamation permit issued under this Ordinance may be modified by the City of Cedarburg if it finds that, due to changing conditions, the nonmetallic mining site is no

longer in compliance with this Ordinance. Such modification shall be by an order conforming with the procedures in **Sec. 13-1-34(b)** and as provided in Section NR 135.24(1), Wisconsin Administrative Code.

- (2) **At the Operators Option.** If the operator of any nonmetallic mine that holds a valid reclamation permit issued under this Ordinance desires to modify such permit or reclamation plan approved under this Ordinance, it may request such modification by submitting a written application for such modification to the City of Cedarburg. The application for permit of plan modification shall be acted on using the standards and procedures of this Ordinance.
 - (3) **Required by the Operator.** The operator of any nonmetallic mine that holds a reclamation permit issued under this Ordinance shall request a modification of such permit if required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this Ordinance.
 - (4) **Review.** All actions on permit modifications requested or initiated under this section are subject to review under **Sec. 13-1-32(k)**.
- (b) **Permit Suspension or Revocation**
- (1) **Grounds.** The City of Cedarburg may suspend or revoke a nonmetallic mining reclamation permit issued pursuant to this Ordinance if it finds any of the grounds listed in Section NR 135.25(1), Wisconsin Administrative Code.
 - (2) **Procedures.** If the City of Cedarburg finds grounds for suspending or revoking a nonmetallic mining reclamation permit set forth in **Sec. 13-1-33(c)(1)**, it may issue a special order suspending or revoking such permit as set forth in **Sec. 13-1-34(b)(2)**.
 - (3) **Consequences.** The consequences of a reclamation permit suspension or revocation order under **Sec. 13-1-33(b)(2)** shall be as set forth in Section NR 135.25(2) and (3), Wisconsin Administrative Code.
- (c) **Annual Operator Reporting.**
- (1) **Contents and Deadline.** Annual reports shall be submitted by the operators of nonmetallic mining sites that satisfy the requirements of Section 135.36, Wisconsin Administrative Code. These reports shall be for reclamation during a calendar year, and submitted in writing within 60 days of the end of each calendar year to the City of Cedarburg. Annual reports shall be submitted until reclamation at each nonmetallic mining site is certified as complete under **Sec. 13-1-33(g)(3)**.
 - (2) **Inspection in Lieu of Report.** The City of Cedarburg may, at its discretion, obtain the information required in **Sec. 13-1-33(c)(1)** by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.
 - (3) **Retention of Annual Reports.** Annual reports submitted under this section or inspection records that replace them shall be retained by the City of Cedarburg for at least 10 years after the calendar year to which they apply at the office of the City Clerk. These records, or accurate

copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Section NR 135, Wisconsin Administrative Code.

(d) **Plan Review Fees.**

- (1) **Amount and Applicability.** A person who intends to operate a nonmetallic mining site for which a permit application has been submitted under **Sec. 13-1-32(a)(1)** shall submit a nonrefundable plan review fee of \$1,000.00. A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to **Sec. 13-1-33(a)**. No plan review fee may be assessed under this section for any nonmetallic mine site for any local transportation-related mine issued an automatic permit under **Sec. 13-1-32(e)(4)**.
- (2) **Relation to Annual Fee.** Any reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under **Sec. 13-1-33(e)**.

(e) **Annual Fees.**

- (1) **Areas Subject to Fees, Procedures and Deadlines.** Operators of all nonmetallic mining sites subject to reclamation permits issued under this Ordinance shall pay fees to the City of Cedarburg. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under **Sec. 13-1-33(e)(2)** and a share for the City of Cedarburg under **Sec. 13-1-33(e)(3)** that equals as closely as possible the costs of examination and approval of nonmetallic mining reclamation plans and the inspection of nonmetallic mining reclamation sites. These fees shall be calculated based on amount of un-reclaimed acres of each site, as defined in Section NR 135.39(1), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year or any part of a year in which nonmetallic mining takes place, until final reclamation is certified as complete under **Sec. 13-1-33(g)**. Fees shall be paid no later than December 31 before the year for which they apply.
- (2) **Wisconsin Department of Natural Resources Share of Fee.** Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Section NR 135.39(3), Wisconsin Administrative Code. For sites on which no nonmetallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be **\$15.00**.
- (3) **The City of Cedarburg's Share of Fee.** Fees paid under this section shall also include an annual fee due to the City of Cedarburg. Such annual fees due to the City of Cedarburg shall be in the amounts stated in Table 3 in Section 135.39(4), Wisconsin Administrative Code.
- (4) **Reduced fee for Inactive Mines.** Any site on which no nonmetallic mining activities has taken place in a calendar year shall be assessed a fee for the following calendar year of \$50.00 per acre of un-reclaimed area.
- (5) **Documentation of the City of Cedarburg's Share of Fee.** If the annual fee in **Sec. 13-1-33(e)(3)** is greater than that established in Section

NR 135.39(4)(c), Wisconsin Administrative Code, the City of Cedarburg shall document in writing its estimated program costs and the need for its annual fees established in **Sec. 13-1-33(e)(3)** on or before April 14, 2006. This documentation shall be available for public inspection.

(f) **Regulatory Reporting and Documentation**

- (1) **Reporting.** The City of Cedarburg shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code.
- (2) **Documentation.** The City of Cedarburg shall, to the best of its ability, maintain the information set forth in Section NR 135.47(3), Wisconsin Administrative Code, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the City of Cedarburg's reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

(g) **Completed Reclamation – Reporting, Certification and Effect**

- (1) **Reporting.** The operator of a nonmetallic mining site may certify completion of reclamation for a portion or all of the nonmetallic site pursuant to a reclamation plan prepared and approved pursuant to this Ordinance and Chapter NR 135, Wisconsin Administrative Code. Such certification documents shall be file with the City Clerk.
- (2) **Reporting of Interim Reclamation.** The operator of a nonmetallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this Ordinance and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in **Sec. 13-1-33(g)(1)**.
- (3) **Certification of Completed Reclamation.** City of Cedarburg shall inspect a nonmetallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including re-vegetation as specified in a plan that conforms to **Sec. 13-1-32(b)**, the City of Cedarburg shall issue the mine operator a written certificate of completion.
- (4) **Effects of Completed Reclamation.** If reclamation is certified by the City of Cedarburg as complete under **Sec. 13-1-33(g)(3)** for part or all of a nonmetallic mining site, then:
 - a. No fee shall be assessed under **Sec. 13-1-33(e)** for the area so certified.
 - b. The financial assurance required by **Sec. 13-1-32(c)** shall be released
 - c. For sites which are reported as interim reclaimed under **Sec. 13-1-33(g)(2)**, and so certified under **Sec. 13-1-33(g)(3)**, financial assurance for reclaiming the certified area shall be reduced in proportion to the total area proposed for reclamation.

- (5) **Effect of Inaction Following Report of Completed Reclamation.** If no written response as required by **Sec. 13-1-33(g)(3)** for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to the City of Cedarburg for it under **Sec. 13-1-33(e)** shall be refunded.
- (6) **Permit Terminated.** When all final reclamation required by a reclamation plan conforming to **Sec. 13-1-32(b)** and required by this Ordinance is certified as complete pursuant to **Sec. 13-1-33(f)**, the City of Cedarburg shall issue a written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation permit.

SEC. 13-1-34 ENFORCEMENT

- (a) **Right of Entry and Inspection.** For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin State Statutes, Chapter NR 135, Wisconsin Administrative Code, or this Ordinance, any authorized officer, agent, employee or representative of the City of Cedarburg may inspect any nonmetallic mining site subject to this Ordinance as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.
- (b) **Orders and Citations**
 - (1) **Enforcement Orders.** The City of Cedarburg may issue orders as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by **Sec. 13-1-32(b)** and a permit issued under this Ordinance. A violation of this Ordinance, an order or permit issued pursuant to this Ordinance or a reclamation plan required by **Sec. 13-1-32(b)** and a permit issued under this Ordinance shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.
 - (2) **Special Orders.** The City of Cedarburg may issue a special order as set forth in Section 295.19(1)(b) and (c), Wisconsin Statutes, suspending or revoking a nonmetallic mining reclamation permit pursuant to **Sec. 13-1-33(b)**, of directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this Ordinance until the necessary plan approval is obtained.
 - (3) **Review of Orders.** An order issued under **Sec. 13-1-34(b)(1) or (b)(2)** may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.
 - (4) **Citations.** The City of Cedarburg may issue a citation under s.66.119, Stats. and **Sec. 13-1-34(c)** under this Ordinance to collect forfeitures or require any action needed to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation

plan required by **Sec. 13-1-32(b)** and a permit issued under this Ordinance. The issuance of a citation under this subsection shall not preclude proceedings under any other ordinance or law relating to the same or any other matter. Proceeding under ordinance or law relating to the same or any other matter shall not preclude the issuance of a citation under this subsection.

- (5) **Enforcement.** The City of Cedarburg may submit any order issued under **Sec. 13-1-34(b)** to the district attorney, the corporation counsel, municipal attorney or the attorney general for enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.
- (c) **Penalties.** Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by **Sec. 13-1-32(b)** and a permit issued under this Ordinance may result in forfeiture as provided in Section 295.29(3), Wisconsin Statutes, as follows:
 - (1) Any person who violates Ordinance NR 135, Wisconsin Administrative Code or an order issued under **Sec. 13-1-34(b)** may be required to forfeit not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation is a separate offence. While an order issued under **Sec. 13-1-34(b)** is suspended, stayed or enjoined, this penalty does not accrue.
 - (2) Except for the violations referred to in **Sec. 13-1-30**, any person who violates Subchapter I of Chapter 295, State Statutes, Chapter NR 135, Wisconsin Administrative Code, any reclamation plan approved pursuant to this Ordinance or an order issued pursuant to **Sec. 13-1-34(b)** shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of violation is a separate offence. While an order issued under **Sec. 13-1-34(b)** is suspended, stayed or enjoined, this penalty does not accrue.”