

# TITLE X

## Chapter 52

### Non-Metallic Mining Reclamation

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## PART I – GENERAL

### 52.01 TITLE

Non-metallic Mining Reclamation Ordinance for the City of Blair.

### 52.02 PURPOSE

The purpose of this Ordinance is to establish a local program to ensure the effective reclamation of non-metallic mining sites on which non-metallic mining takes place in the City of Blair after the effective date of this Ordinance, in compliance with Chapter NR 135, Wisconsin Administrative Code and Subchapter 1 of Chapter 295, Wis. Stat.

### 52.03 STATUTORY AUTHORITY

This Ordinance is adopted under authority of Section 295.14(1), Wis. Stat., Section NR 135.32, Wisconsin Administrative Code, and Section 62.11(3), Wis. Stat.

### 52.04 RESTRICTIONS ADOPTED UNDER OTHER AUTHORITY

The purpose of this Ordinance is to adopt and implement the uniform statewide standards for non-metallic mining required by Section 295.121(1)(a), Wis. Stat. 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 non-metallic mining reclamation previously adopted pursuant to other Wisconsin law.

### 52.05 INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be the applicable requirements for non-metallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wis. Stat. outside the reclamation requirements for non-metallic mining sites required by Subchapter I of Chapter 295, Wis. Stat. and NR 135, Wisconsin Administrative Code. Where any terms or requirements of this Ordinance may be inconsistent or conflicting, the more, the more restrictive requirements or interpretation shall apply. Where a provision of this Ordinance is required by Wis. Stat. 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 Wis. Stat. and the provisions of Chapter NR 135, Wisconsin Administrative Code.

### 52.06 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.

### 52.07 APPLICABILITY

- (1) Overall Applicability The requirements of this Ordinance apply to all operators of non-metallic mining sites within the City of Blair and as provided in Section NR

135.02(1) and (2), Wisconsin Administrative Code except where exempted in Sub-Section 7.20 of this ordinance.

- (2) Exemptions This Ordinance does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code.

52.08 ADMINISTRATION

The provisions of this Ordinance shall be administered by the City of Blair.

52.09 EFFECTIVE DATE

The provisions of this Ordinance shall take upon notice as provided by law.

52.10 DEFINITIONS

All definitions for the purposes of this Ordinance are those contained in Section 135.03, Wisconsin Administrative Code,

**PART II – STANDARDS**

52.11 STANDARDS

All non-metallic mining sites subject to this Ordinance shall be reclaimed in conformance with the standards contained in Subchapter II of Chapter NR 135, Wisconsin Administrative Code.

**PART III—PERMITTING**

52.12 PERMIT REQUIREMENTS

- (1) Non-Metallic Mining Reclamation Permit Application Required. No person may engage in non-metallic mining or in non-metallic mining reclamation in the City of Blair without possessing a non-metallic mining reclamation permit issued by the City of Blair pursuant to this Ordinance unless the activity is specifically exempted in Sub-Section 52.07(1) or (2)
- (2) Required Submittal. The operator of all non-metallic mining sites in the City of Blair shall apply for a reclamation permit from the City of Blair. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18(1), Wisconsin Administrative Code.
- (3) Reclamation Permit Application Contents. The operator of any non-metallic mining site shall submit an application that meets the requirements of Sections NR 135.18(2), Wisconsin Administrative Code and the submittals required under Sub-Section (1) to the City of Blair prior to beginning operations

52.13 RECLAMATION PLAN

- (1) Reclamation Plan Requirements. All operators of non-metallic 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 Sub-Section (1) may, by reference, incorporate existing plans or materials that meet the requirements of this Ordinance.
- (3) Approval of Reclamation Plan. The City of Blair shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of the permit issuance pursuant to Sub-Section 52.16(2). Conditional approval plans shall be made according to Sub-Section 52.16(5) and denials of reclamation plans made according to Sub-Section 52.17. The operator shall keep a copy of the reclamation plan required by this section, once approved by the City of Blair under this Ordinance, at the mine site or if not practical, at the operator's nearest office or place of business.

#### 52.14

#### FINANCIAL ASSURANCE

- (1) Financial Assurance Requirements. All operators of non-metallic mining sites in the City of Blair shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section 135.40, Wisconsin Administrative Code.
- (2) Private Non-Metallic Mines. The operator of any non-metallic mining site that applies for a reclamation permit in conformance with Section 52.12 shall submit the proof of financial assurance required by Sub-Section (1) as specified in the reclamation permit issued to it under this Ordinance.
- (3) Public Non-Metallic Mining. The financial assurance requirements of this section do not apply to non-metallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

#### 52.15

#### PUBLIC NOTICE AND RIGHT OF HEARING

- (1) Reclamation Plan Hearing The City of Blair shall provide public notice and the opportunity for a public informational hearing as set forth in Sections NR 135.20(1) and (2), Wisconsin Administrative Code for any non-metallic mining site for which a complete reclamation permit application that satisfies Section 52.12 is received.
- (2) Local Transportation-Related Mines. No public notice or informational hearing is required for a non-metallic mining reclamation permit issued to a local transportation-related mine pursuant to Sub-Section 52.16(3).

#### 52.16

#### ISSUANCE OF A NON-METALLIC MINING RECLAMATION PERMIT

- (1) Permit Required. No person may engage in non-metallic mining or non-metallic mining reclamation in the City of Blair without obtaining a reclamation permit issued under this Section 52.16, except non-metallic mining sites exempt from this Ordinance as provided in Sub-Section 52.07(2).

- (2) Permit Issuance. Applications for reclamation permits for non-metallic mining sites that satisfy Section 52.12 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 financial assurance that conforms to Sub-Section 52.13, and provision by the applicant of financial assurance that conforms to Sub-Section 52.14 payable to the City of Blair prior to beginning mining.
- (3) Automatic Permit for Local Transportation-Related Mines. The City of Blair shall issue an automatic permit under this Sub-Section for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code.
- (4) Expedited Review. Any operator of a non-metallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in Sub-Section 52.26(2). The expedited review shall be carried out according to the provisions of Section NR 135.23(2), Wisconsin Administrative Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to Section 52.15.
- (5) Permit Conditions. Permits issued under Section 16 may include conditions as provided in Section NR 135.21(2), Wisconsin Administrative Code. One required condition shall be that new mines shall obtain and provide to the City of Blair financial assurance prior to beginning mining pursuant to Section NR 135.40, Wisconsin Administrative Code.

52.17 PERMIT DENIAL

An application for a non-metallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code.

52.18 ALTERNATIVE REQUIREMENTS

- (1) Scope of Alternative Requirements Approvable. An operator of a non-metallic mining site may request an alternative requirement to any reclamation standard established in Section 11.00 of this Ordinance. 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 non-metallic mining site requesting an alternate requirement in Subsection (1) shall demonstrate all the criteria in Section NR 135.26(1), Wisconsin Administrative Code. This documentation shall be submitted in writing to name and address of the governmental body that the City of Blair designates to make these decisions.
- (3) Transmittal of Decisions 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 Blair shall provide notice to the Wisconsin Department of Natural Resources of any alternate requirements approved as provided in Section NR 135.26(3)(a), Wisconsin Administrative Code.

52.19 PERMIT DURATION

A non-metallic mining reclamation permit issued under this Ordinance shall last through operation and reclamation of the non-metallic mining site, unless suspended or revoked pursuant to Sub-Section 32.30, or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.

52.20 PERMIT TRANSFER

A non-metallic 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 and approval by the City of Blair.

52.21 *reserved for future expansion*

52.22 REVIEW

Any permitting decision or action made by the City of Blair under this Ordinance may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

**PART IV – ADMINISTRATION**

52.23 PERMIT MODIFICATION

- (1) By the City of Blair: A non-metallic mining reclamation permit issued under this Ordinance may be modified by the City of Blair if it finds that, due to changing conditions, the non-metallic mining site is no longer in compliance with this Ordinance. Such modification shall be by an order conforming to the procedures in Section 52.32 of this Ordinance and as provided in Section NR 135.24(1), Wisconsin Administrative Code.
- (2) At the Operator's Option: If an operator of any non-metallic mining that holds a 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 Blair.
- (3) Required by the Operator: The operator of any non-metallic 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 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 Section 52.22 of this ordinance.

52.24 PERMIT SUSPENSION OR REVOCATION

- (1) Grounds. The City of Blair may suspend or revoke a non-metallic 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 exist.
- (2) Procedures. If the City of Blair finds grounds for suspending or revoking a non-metallic mining reclamation permit set forth in Sub-Section 52.25(1), it may issue a special order suspending or revoking such permit as set forth in Sub-Section 52.32(2).

52.25 ANNUAL OPERATOR REPORTING

- (1) Contents and Deadlines. Annual reports shall be submitted to the City of Blair by the operators of non-metallic mining sites that satisfy the requirements of Section 135.25(2) and (3), Wisconsin Administrative Code.
- (2) Inspection in Lieu of Report. The City of Blair may, at its discretion, obtain the information required in Sub-Section 52.25(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.

52.26 PLAN REVIEW FEES

- (1) Amount and Applicability. A person who intends to operate a non-metallic mining site for which a permit application has been submitted under Section 52.12 of this Ordinance, shall submit a non-refundable plan review fee in an amount as determined by a fee schedule to be adopted by the City of Blair, and reviewed no less frequently than once each year after the Effective Date. No plan review fee may be assessed under this Section for any local transportation-related mine that has been issued a permit under Sub-Section 52.16(3). A separate plan review fee shall be paid under this Section for any modification to an existing reclamation plan submitted pursuant to Section 52.23 of this Ordinance.
- (2) Expedited Plan Review Fee. A person who intends to operate a non-metallic mining site for which a permit application has been submitted under Section 52.12 of this Ordinance, may obtain an expedited reclamation plan by paying a fee in an amount as determined by a fee schedule to be adopted by the City of Blair and reviewed no less frequently than once each year after the Effective Date. Such fee shall be in addition to that required in Sub-Section (1).

52.27 ANNUAL FEES

- (1) Areas Subject to Fees, Procedures, Deadlines and Amount. Operators of all non-metallic mining sites subject to reclamation permits issued under this Ordinance to the City of Blair shall pay fees to the City in accordance with Section NR 135.39, Wisconsin Administrative Code. These fees shall be calculated based on the amount of un-reclaimed acres of each site, as defined in Section NR 135.39(1)(a), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year, or any part of a year in which non-metallic mining takes place, until final reclamation is certified as complete under Section 52.29 of this Ordinance. Fees shall be paid no later than January 31 for the previous year.

- (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 in which no non-metallic mining has taken place during a calendar year, fees to be paid under this Section for the following year shall be Fifteen and 00/100 Dollars (\$15.00).
- (3) City of Blair Share of Fees. Fees paid under this Section shall also include an annual fee due to the City of Blair, which shall be in an amount as determined by a fee schedule to be adopted by the City and reviewed no less frequently than once each year after the Effective Date.

52.28 \_\_\_\_\_ *reserved for future expansion*

52.29 \_\_\_\_\_ **COMPLETED RECLAMATION – REPORTING, CERTIFICATION AND EFFECT**

- (1) Reporting. The operator of a non-metallic mining site may certify completion of reclamation for a portion or the entire non-metallic mining site pursuant to a reclamation plan prepared and approved pursuant to this Ordinance and Chapter NR 135, Wisconsin Administrative Code.
- (2) Reporting of Interim Reclamation. The operator of a non-metallic 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 Sub-Section (1).
- (3) Certification of Completed Reclamation. The City of Blair shall inspect a non-metallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to Sub-Section (2) within sixty (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 revegetation as specified in a plan that conforms with Section 52.13 of this Ordinance, the City of Blair shall issue the mine operator a written certificate of completion.
- (4) Effect of Completed Reclamation. If reclamation is certified by the City of Blair as complete under Sub-Section (3) for part or all of a non-metallic mining site, then:
  - (A) No fee shall thereafter be assessed under Section 52.27 of this Ordinance for the area so certified;
  - (B) The financial assurance required by Section 52.14 of this Ordinance shall be released;
  - (C) For sites, which are reported as interim reclaimed under Sub-Section (2) and so certified under Sub-Section (3), financial assurance for reclaiming the certified area shall be reduced by the City giving written notice to the bond company.



- (5) Effect of Inaction Following Report of Completed Reclamation. If no written response as required by Sub-Section (3) 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 City for it under Section 52.27 of this Ordinance shall be refunded.

52.30

PERMIT TERMINATION

When all final reclamation required by a reclamation plan conforming to Section 52.13 of this Ordinance and required by this Ordinance is certified as complete pursuant to Sub-Section 52.29(3), the City of Blair shall issue a written statement to the operator of the non-metallic mining site, thereby terminating the reclamation permit.

**PART V – ENFORCEMENT**

52.31

RIGHT OF ENTRY AND INSPECTION

For the purpose of ascertaining compliance with the provisions of Subchapter 1 of Chapter 295, Wis. Stat. Chapter NR 135, Wisconsin Administrative Code, or this Ordinance, any authorized officer, agent, employee or representative of the City of Blair may inspect any non-metallic mining site subject to this Ordinance as provided in Section 295.17(1), Wis. Stat. and Section NR 135.42, Wisconsin Administrative Code.

52.32

ORDERS AND CITATIONS

- (1) Enforcement Orders. The City of Blair may issue orders as set forth in Section 295.19(1)(a), Wis. Stat. to enforce Subchapter 1 of Chapter 295, Wis. Stat. Chapter NR 135, Wisconsin Administrative Code, this Ordinance, a permit issued pursuant to this Ordinance or a reclamation plan required by Section 52.13 of this Ordinance and permit issued under this Ordinance. A violation of this Ordinance, and order or permit issued pursuant to this Ordinance or a reclamation plan required by Section 52.13 of this Ordinance and a permit issued under this Ordinance shall be considered a violation of Subchapter 1 of Chapter 295, Wis. Stat. and Chapter NR 135, Wisconsin Administrative Code.
- (2) Special Orders. The City of Blair may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wis. Stat. suspending or revoking a non-metallic mining reclamation permit pursuant to Section 52.24 of this Ordinance, or directing and operator to immediately cease an activity regulated under Subchapter 1 of Chapter 295, Wis. Stat., Chapter NR 135, Wisconsin Administrative Code or this Ordinance until the necessary plan approval is obtained.
- (3) Review of Orders. An order issued under Sub-Section (1) or Sub-Section (2) may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.
- (4) Citations. The City of Blair may issue any order issue a citation for any violation of this ordinance; any failure to comply with this ordinance; any failure to comply with any Enforcement Order issued under 52.32(1) or any Special Order issued under 52.32(2) of this ordinance. A citation may be issued for a violation or failure to comply with Sub-Chapter I or Chapter 295, Wis. Stat. or Chapter NR135, Wisconsin Administrative Code.

- (5) Enforcement. The City of Blair may submit any order issued under this Section 52.32 to the District Attorney, the Corporation Counsel, the Municipal Attorney or the Attorney General for enforcement as provided in Section 295.19(1)(d), Wis. Stat.

52.33

PENALTIES

- (1) Any person who violates this chapter or an order issued under sub. (1) or (2) of Section 52.32 may be required by the regulatory authority 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 this section is suspended, stayed or enjoined, this penalty does not accrue. The cost of enforcement incurred by the regulatory authority shall be considered in establishing these forfeitures.
- (2) Except for the violations referred to in paragraph (1), any person who violates Chapter 295, Sub-Chapter I, Wis. Stat., this Chapter, any reclamation plan approved pursuant to this Chapter or an order issued under sub. (1) or (2), of Section 52.32, shall forfeit not less than Ten Dollars (\$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 this section is suspended, stayed or enjoined, this penalty does not accrue.

December 10, 2012 – create Chapter 52 relating to Non-Metallic Mining Reclamation