

Oneida Tribe of Indians of Wisconsin
BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

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BC Resolution # 08-01-07-G
Adoption of the Non-Metallic Mine Reclamation Law

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of the Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Tribe has recently acquired a sand pit which it would like to mine; and
- WHEREAS,** the Tribe wants to regulate the reclamation of the sand pit and therefore needs to adopt a law for the reclamation of nonmetallic mines; and
- WHEREAS,** the proposed Non-Metallic Mine Reclamation law was drafted by the Legislative Reference Office in conjunction with the Environmental, Health and Safety and Zoning departments, as well as the Oneida Law Office; and
- WHEREAS,** the Non-Metallic Mine Reclamation proposal received a public hearing in accordance with the Administrative Procedures Act on June 12, 2007.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby adopts the attached Non-Metallic Mine Reclamation law.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 8 members were present at a meeting duly called, noticed and held on the 1st day of August, 2007; that the foregoing resolution was duly adopted at such meeting by a vote of 7 members for; 0 members against; and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


Patricia Hoeft, Tribal Secretary
Oneida Business Committee

Chapter 41
NON-METALLIC MINE RECLAMATION

41.1 Purpose and Policy	41.13 Permit Transfer
41.2 Adoption, Amendment, Repeal	41.14. Review
41.3 Definitions	41.15. Permit Modification
41.4 Administration	41.16. Permit Suspension or Revocation
41.5 Applicability	41.17. Annual Operator Reporting
41.6 Standards	41.18. Annual Fees
41.7 Nonmetallic Mining Reclamation Permit	41.19. Regulatory Reporting and Documentation
41.8 Reclamation Plan	41.20. Completed Reclamation-Reporting, Certification and Effect
41.9 Financial Assurance	41.21. Permit Termination
41.10 Public Notice and Right of Hearing	41.22. Right of Entry and Inspection
41.11 Alternative Requirements	41.23. Violations
41.12 Permit Duration	

Analysis by the Legislative Reference Office

The proposed new law defines the responsibilities of the operators of nonmetallic mining sites, Zoning Department (Department) and the Land Commission in relation to the reclamation of nonmetallic mining sites located within the Reservation's boundaries.

The law sets the following:

- ▶ Nonmetallic mining reclamation standards
- ▶ Reclamation plan requirements
- ▶ Reclamation permit application requirements including: approval, conditional approval, denial, duration, transfer, modification, suspension, revocation and termination
- ▶ Financial assurances
- ▶ Public notice and public hearing requirements
- ▶ Regulatory reporting and documentation
- ▶ Annual fees
- ▶ Orders and citations

The Zoning Department is required to recommend approval, conditional approval or denial of a reclamation plan and permit to the Land Commission. If the Land Commission fails to act upon a recommendation within 30 days of the Department's recommendation, it is passively approved. An appeal of any decision or action, including decisions relating to the plan or permit, will go through the Tribe's administrative procedures act. *See section 41.14.*

The proposed law requires a public hearing notice and process substantially similar to the Administrative Procedures Act. The public hearing process will allow Tribal members and owners of land within 1,200 feet of a proposed site an opportunity to provide comments. The nonmetallic mining reclamation public hearing can be combined with a zoning related hearing on the same mine. *See section 41.10.*

This law is compliant with the Format for Laws. A public hearing was held on June 12, 2007 and no comments were received.

41.1. Purpose and Policy.

51 41.1-1. *Purpose.* The purpose of this law is to ensure the effective reclamation of nonmetallic
52 mining sites on which nonmetallic mining takes place within the boundaries of the reservation of the
53 Oneida Tribe of Indians of Wisconsin and any other lands added under any law of the United States.
54 41.1-2. *Policy.* It is the policy of the Tribe to have procedures for reclamation of nonmetallic
55 mining sites within the Reservation.
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57 **41.2. Adoption, Amendment, Repeal.**

58 41.2-1. This law is adopted by the Oneida Business Committee by resolution BC_____.

59 41.2-2. This law may be amended by the Oneida Business Committee or the Oneida General Tribal
60 Council as set forth under the laws governing Tribal administrative procedures.

61 41.2-3. Should a provision of this law or the application thereof to any person or circumstances be
62 held as invalid, such invalidity shall not affect other provisions of this law which are considered to
63 have legal force without the invalid portions.

64 41.2-4. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly
65 conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with
66 or is contrary to this law.

67 41.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of
68 Wisconsin.
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70 **41.3. Definitions.**

71 41.3-1. This section shall govern the definitions of words and phrases used within this law. All
72 words not defined herein shall be used in their ordinary and everyday sense.

73 (a) "Alternative requirement" means an alternative to the reclamation standards of this law
74 provided through a written authorization granted by the Department pursuant to 41.11.

75 (b) "Contemporaneous reclamation" means the sequential or progressive reclamation of
76 portions of the nonmetallic mining site affected by mining operations that is performed in
77 advance of final site reclamation, but which may or may not be final reclamation, performed
78 to minimize the area exposed to erosion, at any one time, by nonmetallic mining activities.

79 (c) "Department" means the Oneida Zoning Department.

80 (d) "Environmental pollution" means the contaminating or rendering unclean or impure the
81 air, land or waters within the Reservation, or making the same injurious to public health,
82 harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

83 (e) "Financial assurance" means a commitment of funds or resources by an operator to the
84 Department that satisfies the requirements in 41.9 and is sufficient to pay for reclamation
85 activities required by this law.

86 (f) "Landowner" means the person who has title to land in fee simple or who possesses land
87 held in trust or who holds a land contract for the land. A landowner is not a person who
88 owns nonmetallic mineral rights to land if a different person possesses title to that land in fee
89 simple or possesses land held in trust or holds a land contract for that land.

90 (g) "Nonmetallic mineral" means a product, commodity or material consisting principally
91 of naturally occurring, organic or inorganic, nonmetallic, nonrenewable material.
92 Nonmetallic minerals include, but are not limited to, stone, sand, gravel, asbestos, beryl,
93 diamond, clay, coal, feldspar, peat, talc and topsoil.

94 (h) "Nonmetallic mining" or "mining" means all of the following:

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(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 dewatering.

(i) "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 law, 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.

(j) "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.

(k) "Nonmetallic mining site" or "site" means all contiguous areas of present or proposed mining on tribal lands and waters held in trust, tribal lands and waters held in fee status, fee status lands under the control of individual Oneida members, heirship lands and waters and individual and tribal trust lands and waters, within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation; and such other lands as may be hereafter added, both within and without the exterior boundaries of the Oneida Reservation, under any law of the United States, except as otherwise provided by law, including:

- (1) The location where nonmetallic mining is proposed or conducted.
- (2) Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.
- (3) Areas where nonmetallic mining refuse is deposited.
- (4) Areas affected by activities such as the construction or improvement of private roads or haulage ways for nonmetallic mining.
- (5) Areas where grading or regrading is necessary.
- (6) 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.

139 (l) "Operator" means any person or entity who is engaged in, or who has applied for a permit
140 to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries,
141 agents, employers, contractors or subcontractors.

142 (m) "Reservation" means all land within the exterior boundaries of the Reservation of the
143 Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the
144 Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

145 (n) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water
146 supply treatment plant or air pollution control facility and other discarded or salvageable
147 materials, including solid, liquid, semisolid or contained gaseous materials resulting from
148 industrial, commercial, mining and agricultural operations, and from community activities,
149 but does not include solids or dissolved material in domestic sewage, or solid or dissolved
150 materials in irrigation return flows or industrial discharges which are point sources, or source
151 material, special nuclear material or by-product material which is defined as radioactive
152 material, except special nuclear material, yielded in or made radioactive by exposure to the
153 radiation incident to the process of producing or utilizing special nuclear material or the
154 tailings or waste produced by the extraction or concentration of uranium or thorium from any
155 ore processed primarily for its source material content.

156 (o) "Topsoil" means the surface layer of soil which is generally more fertile than the
157 underlying soil layers, which is the natural medium for plant growth and which can provide
158 the plant growth, soil stability and other attributes necessary to meet the success standards
159 approved in the reclamation plan.

160 (p) "Topsoil substitute material" means soil or other unconsolidated material either used
161 alone or mixed with other beneficial materials and which can provide the plant growth, site
162 stability and other attributes necessary to meet the success standards approved in the
163 reclamation plan.

164 (q) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

165 (r) "Unreclaimed acre" or "unreclaimed acres" means:

166 (1) those unreclaimed areas where nonmetallic mining reclamation has been
167 completed but is not yet certified as reclaimed under 41.20-3. However the term
168 does not include any areas described in 41.3-1(r)(2).

169 (2) "Unreclaimed acre" or "unreclaimed acres" does not include:

170 (A) Those areas where reclamation has been completed and certified as
171 reclaimed under 41.20-3.

172 (B) Those portions of nonmetallic mining sites which are included in
173 nonmetallic mining reclamation plan approved pursuant to this law but are
174 not yet affected by nonmetallic mining.

175 (C) Areas previously mined but used for a non-mining activity, such as
176 stockpiling of materials used for an industrial activity such as an asphalt
177 plant, concrete batch plant, block and tile operation or other industry that uses
178 products produced from nonmetallic mining.

179 (D) For purposes of fees under 41.8, those areas within a nonmetallic mining
180 site which the Department has determined to have been successfully
181 reclaimed on an interim basis in accordance with 41.20-3.
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183 **41.4. Administration.**

184 41.4-1. The provisions of this law shall be administered by the Oneida Zoning Department.
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186 **41.5. Applicability.**

187 41.5-1. *Overall Applicability.* The provisions of this law shall extend to all tribal lands and waters
188 held in trust, all tribal lands and waters held in fee status, all fee status lands under the control of
189 individual Oneida members, all heirship lands and waters and all individual and tribal trust lands and
190 waters, all within the exterior boundaries of the Oneida Tribe of Indians of Wisconsin Reservation;
191 and to such other lands as may be hereafter added, both within and without the exterior boundaries
192 of the Oneida Reservation, under any law of the United States, except as otherwise provided by law.

193 41.5-2. Exemptions. This law does not apply to the following activities:

194 (a) Excavations or grading by a person solely for domestic or farm use at that person's
195 residence or farm.

196 (b) Excavations or grading conducted for the construction, reconstruction, maintenance or
197 repair of a highway, railroad, airport facility, or any other transportation facility where the
198 excavation or grading is entirely within the property boundaries of the transportation facility.

199 (c) Grading conducted for preparing a construction site or restoring land following a flood
200 or natural disaster.

201 (d) Excavations for building construction purposes conducted on the building site.

202 (e) Nonmetallic mining at nonmetallic mining sites that affect less than one acre of total land
203 over the life of the mine.

204 (f) Any metallic mining operation.

205 (g) Any activities required to prepare, operate or close a solid waste disposal facility, or a
206 hazardous waste disposal facility, that are conducted on the property where the facility is
207 located, but an applicable nonmetallic mining reclamation ordinance and the standards
208 established in this law apply to activities related to solid waste or hazardous waste disposal
209 that are conducted at a nonmetallic mining site that is not on the property where the solid
210 waste or hazardous waste disposal facility is located, such as activities to obtain nonmetallic
211 minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

212 (h) Dredging for navigational purposes, to construct or maintain farm drainage ditches and
213 for the remediation of environmental contamination and the disposal of spoils from these
214 activities.
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216 **41.6. Standards.**

217 41.6-1. All nonmetallic mining sites subject to this law shall be reclaimed in conformance with the
218 standards contained in this section.

219 41.6-2. *General Standards.*

220 (a) Refuse and Other Solid Wastes. Nonmetallic mining refuse and other solid wastes shall
221 be reused in accordance with a reclamation plan.

222 (b) Area Disturbed and Contemporaneous Reclamation. Nonmetallic mining reclamation
223 shall be conducted, to the extent practicable, to minimize the area disturbed by nonmetallic
224 mining and to provide for nonmetallic mining reclamation of portions of the nonmetallic
225 mining site while nonmetallic mining continues on other portions of the nonmetallic mining
226 site.

227 (c) Public Health, Safety and Welfare. All nonmetallic mining sites shall be reclaimed in
228 a manner so as to comply with Tribal regulations governing public health, safety and welfare.

229 (d) Habitat Restoration. When the land use required by the reclamation plan approved
230 pursuant to this law requires plant, fish or wildlife habitat, it shall be restored, to the extent
231 practicable, to a condition at least as suitable as that which existed before the lands were
232 affected by nonmetallic mining operations.

233 (e) Compliance with Environmental Regulations. Reclamation of nonmetallic mining sites
234 shall comply with any other applicable laws including those related to environmental
235 protection, zoning and land use control.

236 41.6-3. *Surface Water and Wetlands Protection.* Nonmetallic mining reclamation shall be
237 conducted and completed in a manner that assures compliance with the Tribe's water quality
238 standards for surface waters and wetlands contained. Before disturbing the surface of a nonmetallic
239 mining site and removing topsoil, all necessary measures for diversion and drainage of runoff from
240 the site to prevent pollution of waters within the Reservation shall be installed in accordance with
241 the reclamation plans approved pursuant to this law. Diverted or channelized runoff resulting from
242 reclamation may not adversely affect neighboring properties.

243 41.6-4. *Groundwater Protection.*

244 (a) Groundwater Quantity. A nonmetallic mining site shall be reclaimed in a manner that
245 does not cause a permanent lowering of the water table that results in adverse effects on
246 surface waters or a significant reduction in the quantity of groundwater reasonably available
247 for future users of groundwater.

248 (b) Groundwater Quality. Nonmetallic mining reclamation shall be conducted in a manner
249 which does not cause groundwater quality standards to be exceeded.

250 41.6-5. *Topsoil Management.*

251 (a) Removal. Topsoil and topsoil substitute material shall be removed, protected and
252 redistributed to support reclamation and site stabilization. Topsoil shall be managed as
253 specified in the reclamation plan approved pursuant to this law in order to achieve
254 reclamation to the approved post-mining land use. Topsoil and topsoil substitute material
255 removal shall be performed, as required by the reclamation plan, prior to any mining activity
256 associated with any specific phase of the mining operation.

257 (b) Volume. The operator shall obtain the volume of soil required to perform final
258 reclamation by removal of on-site topsoil or topsoil substitute material or by obtaining
259 topsoil or substitute material as needed to make up the volume of topsoil as specified in the
260 reclamation plan approved pursuant to this law.

261 (1) Existing resources that may be used to identify the soil present on a site include
262 soil surveys and information obtained from a soil scientist or other available
263 resources. Topsoil or topsoil substitute material shall be removed from areas to be
264 affected by mining operations to the depth indicated in the reclamation plan or as
265 determined in the field by a soil scientist, project engineer or other qualified
266 professional.

267 (c) Storage. Once removed, topsoil or topsoil substitute material shall, as required by the
268 reclamation plan approved pursuant to this law, either be used in contemporaneous
269 reclamation or stored in an environmentally acceptable manner. The location of stockpiled
270 topsoil or topsoil substitute material shall be chosen to protect the material from erosion or

271 further disturbance or contamination. Runoff water shall be diverted around all locations in
272 which topsoil or topsoil substitute material is stockpiled.

273 41.6-6. *Final Grading and Slopes.*

274 (a) All areas affected by mining shall be graded in accordance with the reclamation plan
275 approved pursuant to this law to achieve a stable and safe condition consistent with the post
276 mining land use. The reclamation plan may designate areas such as stable slopes and rock
277 faces which do not require final grading.

278 (b) Final reclaimed slopes covered by topsoil or topsoil substitute material may not be
279 steeper than a 3:1 horizontal to vertical incline, unless alternative requirements are approved
280 under 41.11, and stable slopes can be demonstrated based on site-specific engineering
281 analysis. The engineering analysis shall show that a minimum acceptable slope stability
282 factor is attainable at a steeper slope and that the post-mining land use specified in the
283 reclamation plan is not adversely affected. When the slope occurs at the edge of a body of
284 water, this approved slope shall extend vertically six (6) feet below the lowest seasonal water
285 level. A slope no steeper than 3:1 shall be created at a designated location or locations,
286 depending on the size of the water body to allow for a safe exit.

287 (c) All areas in the nonmetallic mine site where topsoil or topsoil substitute material is to
288 be reapplied shall be graded or otherwise prepared prior to topsoil or topsoil substitute
289 material redistribution to provide the optimum adherence between the topsoil or topsoil
290 substitute material and the underlying material.

291 41.6-7. *Topsoil Redistribution for Reclamation.* Topsoil or topsoil substitute material shall be
292 redistributed in accordance with the reclamation plan approved pursuant to this law in a manner
293 which minimizes compaction and prevents erosion. Topsoil or topsoil substitute material shall be
294 uniformly redistributed except where uniform redistribution is undesirable or impractical. Topsoil
295 or topsoil substitute material redistribution may not be performed during or immediately after a
296 precipitation event until the soils have sufficiently dried.

297 41.6-8. *Revegetation and Site Stabilization.* Except for permanent roads or similar surfaces
298 identified in the reclamation plan approved pursuant to this law, all surfaces affected by nonmetallic
299 mining shall be reclaimed and stabilized by revegetation or other means. Revegetation and site
300 stabilization shall be in accordance with the approved reclamation plan and shall be performed as
301 soon as practicable after mining activity has permanently ceased in any part of the mine site.

302 41.6-9. *Assessing Completion of Successful Reclamation.*

303 (a) The criteria for assessing when reclamation is complete and, therefore, when the
304 financial assurance may be released shall be specified in the reclamation plan approved
305 pursuant to this law. Criteria to evaluate reclamation success shall be quantifiable.

306 (b) Compliance with the revegetation success standards in the approved reclamation plan
307 shall be determined by:

308 (1) On-site inspections by an agent of the Department;

309 (2) Reports presenting results obtained during reclamation evaluations including
310 summarized data on revegetation, photodocumentation or other evidence that the
311 criteria approved in the reclamation plan to ascertain success have been met; or

312 (3) A combination of inspections and reports.

313 (c) In those cases where the post mining land use specified in the reclamation plan requires
314 a return of the mining site to a pre-mining condition, the operator shall obtain baseline data

315 on the existing plant community for use in the evaluation of reclamation success pursuant
316 to this section.

317 (d) Revegetation success may be determined by:

318 (1) Comparison to an appropriate reference area;

319 (2) Comparison to baseline data acquired at the mining site prior to its being affected
320 by mining; or

321 (3) Comparison to an approved alternate technical standard.

322 (e) Revegetation using a variety of plants indigenous to the area is favored.

323 41.6-10. *Intermittent Mining.* Intermittent mining may be conducted provided that the possibility
324 of intermittent cessation of operations is addressed in an operator's reclamation permit, no
325 environmental pollution or erosion of sediments is occurring, and financial assurance for reclamation
326 pursuant to 41.9 is maintained covering all remaining portions of the site that have been affected by
327 nonmetallic mining and that have not been reclaimed.

328 41.6-11. *Maintenance.* During the period of the site reclamation, after the operator has stated that
329 reclamation is complete but prior to release of financial assurance, the operator shall perform any
330 maintenance necessary to prevent erosion, sedimentation or environmental pollution, comply with
331 the standards of this section, or to meet the goals specified in the reclamation plan approved pursuant
332 to this law.

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334 **41.7. Nonmetallic Mining Reclamation Permit.**

335 41.7-1. *Permit Required.* Every operator of a nonmetallic mining site on the reservation who
336 engages in or plans to engage in nonmetallic mining shall obtain a reclamation permit issued under
337 this section, except for nonmetallic mining sites that are exempt from this law under 41.5-2. No
338 person may engage in nonmetallic mining or nonmetallic mining reclamation without a reclamation
339 permit issued pursuant to this law.

340 41.7-2. *Application.* All operators of nonmetallic mining sites shall apply for a reclamation permit
341 from the Department. All applications for reclamation permits shall be accompanied by the
342 following:

343 (a) A brief description of the general location and nature of the nonmetallic mine.

344 (b) A legal description of the property on which the nonmetallic mine is located or proposed,
345 including the parcel identification number.

346 (c) The names, addresses and telephone numbers of all persons or organizations who are
347 owners or lessors of the property on which the nonmetallic mining site is located.

348 (d) The name, address and telephone number of the person or organization who is the
349 operator.

350 (e) A certification by the operator of his or her intent to comply with the nonmetallic mining
351 reclamation standards established by this law.

352 (f) A reclamation plan and plan review fees.

353 (g) A land use permit.

354 41.7-3. *Expedited Review.* Any operator of a nonmetallic mining site may request expedited review
355 of a reclamation permit application under 41.7-3(a) or 41.7-3(b) as follows:

356 (a) The operator may submit a request for expedited permit review with payment of the
357 expedited review fee specified in 41.18-2. This request shall state the need for such
358 expedited review and the date by which such expedited review is requested.

359 (b) Following receipt of a request under this subsection, the Department shall inform the
360 applicant of the estimated date for decision on issuance of the permit. If the applicant then
361 elects not to proceed with the expedited review, the fee paid under 41.7-3(a) shall be
362 returned.

363 (c) Expedited review under this subsection shall not waive, shorten or otherwise affect the
364 public notice and right of hearing pursuant to 41.10. This section does not impose an
365 obligation upon the Department to act upon a permit application under this section by a
366 specific date.

367 41.7-4. *Permit Conditions.* Any decision under this section may include conditions as provided
368 below:

369 (a) The Department may issue a reclamation permit or approve a reclamation plan subject
370 to general or site-specific conditions if needed to assure compliance with the nonmetallic
371 mining reclamation requirements of this law.

372 (b) One required condition of the issued permit shall be that the new mine obtain financial
373 assurance pursuant to 41.9 prior to beginning mining.

374 41.7-5. *Permit Approval.* An application for a nonmetallic mining reclamation permit shall be
375 approved unless the Department finds any of the following:

376 (a) The applicant has, after being given an opportunity to make corrections, failed to provide
377 to the Department an adequate permit application, reclamation plan, financial assurance or
378 any other submittal required by this law.

379 (b) The proposed nonmetallic mining site cannot be reclaimed in compliance with the
380 reclamation standards contained in this law.

381 (c) The applicant, or its agent, principal or predecessor has, during the course of nonmetallic
382 mining in Wisconsin or elsewhere within ten (10) years of the permit application or
383 modification request being considered shown a pattern of serious violations of this law or of
384 other environmental laws related to nonmetallic mining reclamation. The following may be
385 considered in making this determination of a pattern of serious violations:

386 (1) Results of judicial or administrative proceedings involving the operator or its
387 agent, principal or predecessor.

388 (2) Suspensions or revocations of nonmetallic mining reclamation permits pursuant
389 to this law, or other reclamation ordinances.

390 (3) Forfeitures of financial assurance.

391 (d) The applicant fails to meet the requirements under 41.8.

392 (e) The permit would violate Tribal policy.

393 41.7-6. A decision to deny an application to issue a reclamation permit may be reviewed under
394 41.14-2.

395 41.7-7. A denial under this subsection shall be in writing and shall contain documentation of reasons
396 for denial.

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398 **41.8. Reclamation Plan.**

399 41.8-1. *Reclamation Plan Requirements.* All operators of nonmetallic mining sites subject to this
400 law shall prepare and submit a reclamation plan that meets the following requirements:

401 (a) Plan Required. An operator who conducts or plans to conduct nonmetallic mining shall
402 submit to the Department a reclamation plan that meets the requirements and standards of

403 this law. To avoid duplication, the reclamation plan may, by reference, incorporate existing
404 plans or materials that meet the requirements of this law.

405 (b) Site Information. The reclamation plan shall include information sufficient to describe
406 the existing natural and physical conditions of the site, including, but not limited to:

407 (1) Maps of the nonmetallic mining site including the general location, property
408 boundaries, the areal extent, depth to bedrock, geologic composition and depth of the
409 nonmetallic mineral deposit, the distribution, thickness and type of topsoil, the
410 approximate elevation of ground water, the location of surface waters and the
411 existing drainage patterns.

412 (A) Topsoil or topsoil substitute material required to support revegetation
413 needed for reclaiming the site to approved post-mining land use can be
414 identified using soil surveys or other available information.

415 (2) Information available to the mine operator on biological resources, plant
416 communities, and wildlife use at and adjacent to the proposed or operating mine site.

417 (3) Existing topography as shown on contour maps of the site at contour intervals
418 as specified by the Department.

419 (4) Location of manmade features on or near the site.

420 (A) Some of or all of the information required above may be shown on the
421 same submittal, i.e., the site map required by 41.8-1(b)(1) may also show
422 topography required by 41.8-1(b)(3).

423 (c) Post-Mining Land Use.

424 (1) The reclamation plan shall specify a proposed post-mining land use for the
425 nonmetallic mine site. The proposed post-mining land use shall be consistent with
426 Tribal land use plans and Tribal zoning at the time the plan is submitted, unless a
427 change to the land use plan or zoning is proposed. The proposed post-mining land
428 use shall also be consistent with any applicable laws in effect at the time the plan is
429 submitted.

430 (2) Land used for nonmetallic mineral extraction in areas zoned exclusively for
431 agricultural use shall be restored to agricultural use.

432 (d) Reclamation Measures. The reclamation plan shall include a description of the proposed
433 reclamation, including methods and procedures to be used and a proposed schedule and
434 sequence for the completion of reclamation activities for various stages of reclamation of the
435 nonmetallic mi ning site. The following shall be included:

436 (1) A description of the proposed earthwork and reclamation, including final slope
437 angles, high wall reduction, benching, terracing and other structural slope
438 stabilization measures.

439 (2) The methods of topsoil or topsoil substitute material removal, storage,
440 stabilization and conservation that will be used during reclamation.

441 (3) A plan or map which shows anticipated topography of the reclaimed site and any
442 water impoundments or artificial lakes needed to support the anticipated future land
443 use of the site.

444 (4) A plan or map which shows surface structures, roads and related facilities after
445 the cessation of mining.

446 (5) The estimated cost of reclamation for each stage of the project or the entire site

447 if reclamation staging is not planned.

448 (6) A revegetation plan which shall include timing and methods of seed bed
449 preparation, rates and kinds of soil amendments, seed application timing, methods
450 and rates, mulching, netting and any other techniques needed to accomplish soil and
451 slope stabilization.

452 (7) Quantifiable standards for revegetation adequate to show that a sustainable stand
453 of vegetation has been established which will support the approved post-mining land
454 use. Standards for revegetation may be based on the percent of vegetative cover,
455 productivity, plant density, diversity or other applicable measures.

456 (8) A plan and, if necessary, a narrative showing erosion control measures to be
457 employed during reclamation activities. These shall address how reclamation
458 activities will be conducted to minimize erosion and pollution of surface and
459 groundwater.

460 (9) A hydrogeological investigation is required by a hydrogeologist to assure that
461 there will not be a permanent lowering of base flow in adjacent streams or
462 degradation of groundwater quality.

463 (10) A description of any areas which will be reclaimed on an interim basis
464 sufficient to qualify for the reduction of fees pursuant to 41.20-4(c) and which will
465 be subsequently disturbed prior to final reclamation. Descriptions shall include an
466 identification of the proposed areas involved, methods of reclamation to comply with
467 the standards in this law and timing of interim and final reclamation.

468 (A) Some of the information required by this subsection may be combined
469 to avoid duplication, e.g. a single map may show anticipated post-mining
470 topography required by 41.8-1(d)(3) as well as structures and roads as
471 required by 41.8-1(d)(4).

472 (e) The reclamation plan shall contain criteria for assuring successful reclamation in
473 accordance with 41.6-9.

474 (f) Certification of Reclamation Plan. The operator shall provide a signed certification that
475 reclamation will be carried out in accordance with the reclamation plan. The landowner and
476 lessee, if different from the operator, shall also provide signed certification that they concur
477 with the reclamation plan and will allow its implementation.

478 (g) Approval. The operator shall keep a copy of the reclamation plan required by this
479 section, once approved by the Department under this law, at the mine site or, if not
480 practicable, at the operator's nearest office or place of business.

481 41.8-2. *Plan Review Fees.* A person who intends to operate a nonmetallic mining site for which a
482 permit application has been submitted under 41.7-2 shall submit a non-refundable plan review fee,
483 which shall be established by the Department. A separate plan review fee shall be paid under this
484 section for any modification to an existing reclamation plan submitted pursuant to 41.15.

485 41.8-3. *Expedited Plan Review Fee.* A person who intends to operate a nonmetallic mining site for
486 which a permit application has been submitted under 41.7-2 may obtain expedited reclamation plan
487 review by paying a fee to the Department. Such fee shall be in addition to that required in 41.8-2.

488 41.8-4. *Relation to Annual Fee.* Any reclamation plan review fee or expedited reclamation plan
489 review fee collected under this section shall be added to and collected as part of the first annual fee
490 collected under section 41.18.

491 41.8-5. *Public Nonmetallic Mining*. The plan review fee requirements of this section do not apply
492 to nonmetallic mining conducted by the Tribe through its agencies or departments.
493

494 **41.9. Financial Assurance.**

495 41.9-1. The following financial assurance requirements do not apply to nonmetallic mining
496 conducted by the Tribe through its agencies or departments.

497 41.9-2. Financial Assurance Requirements. All operators of nonmetallic mining sites on the
498 reservation shall prepare and submit a proof of financial assurance that meets the following
499 requirements:

500 (a) Notification. The Department shall provide written notification to the operator of the
501 amount of financial assurance required under 41.9-2(c).

502 (b) Filing. Following approval of the nonmetallic reclamation permit, and as a condition of
503 the permit, the operator shall file a financial assurance with the Department. The financial
504 assurance shall provide that the operator shall faithfully perform all requirements in this law,
505 an applicable reclamation ordinance and the reclamation plan. Financial assurance shall be
506 payable to the Oneida Tribe of Indians of Wisconsin. In cases where one or more regulatory
507 authorities regulate a nonmetallic mining site, all financial assurance shall be made payable
508 to the Department only if it currently has primary regulatory responsibility.

509 (c) Amount and Duration of Financial Assurance. The amount of financial assurance shall
510 equal as closely as possible the cost to the Department of hiring a contractor to complete
511 either final reclamation or progressive reclamation according to the approved reclamation
512 plan. The amount of financial assurance shall be reviewed periodically by the Department
513 to assure it equals outstanding reclamation costs. Any financial assurance filed with the
514 Department shall be in an amount equal to the estimated cost for reclaiming all sites the
515 operator has under project permits. The Department may accept a lesser initial amount of
516 financial assurance provided that the permittee initiates a process to continuously increase
517 the amount of financial assurance until it is adequate to effect reclamation. An escrow
518 account may be established that is based on production gross sales and serves to provide
519 regular payments to an account that is designed to grow to the amount necessary to guarantee
520 performance of reclamation by the expected time of final reclamation. The period of the
521 financial assurance is dictated by the period of time required to establish the post mining land
522 use declared and approved of in the reclamation plan. This may extend beyond the permit
523 if required to accomplish successful and complete implementation of the reclamation plan.

524 (d) Form and Management. Financial assurance shall be provided by the operator and shall
525 be by a bond or an alternate financial assurance. Financial assurance shall be payable to the
526 Department and released upon successful completion of the reclamation measures specified
527 in the reclamation plan. Alternate financial assurances may include, but are not limited to
528 cash, certificates of deposits, irrevocable letters of credit, irrevocable trusts, established
529 escrow accounts, or government securities. Any interest from the financial assurance shall
530 be paid to the operator. Certificates of deposit shall be automatically renewable or other
531 assurances shall be provided before the maturity date. Financial assurance arrangements may
532 include, at the discretion of the Department, a blend of different options for financial
533 assurance including a lien on the property on which the nonmetallic mining site occurs or a
534 combination of financial assurance methods.

535 (e) Multiple Projects. Any operator who obtains a permit from the Department for two (2)
536 or more nonmetallic mining sites may elect, at the time the second or subsequent site is
537 approved, to post a single financial assurance in lieu of separate financial assurance
538 instruments for each nonmetallic mining site. When an operator elects to post a single
539 financial assurance in lieu of separate financial assurances for each mining site, no financial
540 assurances previously posted on individual mining sites shall be released until the new
541 financial assurance has been accepted by the Department.

542 (f) Certification of Completion and Release.

543 (1) The operator shall notify the Department, by filing a notice of completion, at the
544 time that he or she determines that reclamation of any portion of the mining site or
545 the entire site is complete. The Department shall inspect the mine site or portion
546 thereof that was the subject of the notice of completion to determine if reclamation
547 has been carried out in accordance with the approved reclamation plan. The
548 Department may partially release the financial assurance if it determines that
549 compliance with a portion of the reclamation plan has been achieved and requires no
550 waiting period. After determining that reclamation is complete, the Department shall
551 issue a certificate of completion and shall release the financial assurance or
552 appropriately reduce the financial assurance in the case of reclamation of a portion
553 of the mining site.

554 (2) The Department shall make a determination of whether or not the certification
555 in 41.9-2(f)(1) can be made within sixty (60) days after the request is received.

556 (3) The Department may make a determination under this subsection that:

557 (A) Reclamation is not yet complete;

558 (B) It is not possible to assess whether reclamation is complete due to
559 weather conditions, snow cover or other relevant factors;

560 (C) Reclamation is complete in a part of the mine; or

561 (D) Reclamation is fully complete.

562 (g) Forfeiture. Financial assurance shall be forfeited if any of the following occur:

563 (1) A permit is revoked under 41.16 and the appeals process has been completed.

564 (2) An operator ceases mining operations and fails to reclaim the site in accordance
565 with the reclamation plan.

566 (h) Cancellation. Financial assurance shall provide that it may not be cancelled by the surety
567 or other holder or issuer except after not less than a ninety (90) day notice to the Department
568 in writing by registered or certified mail. Not less than thirty (30) days prior to the expiration
569 of the ninety (90) day notice of cancellation, the operator shall deliver to the Department a
570 replacement proof of financial assurance. In the absence of this replacement financial
571 assurance, all mining shall cease until the time it is delivered and in effect.

572 (i) Changing Methods of Financial Assurance. The operator of a nonmetallic mining site
573 may change from one method of financial assurance to another. This may not be done more
574 than once a year unless required by an adjustment imposed pursuant to 41.9-2(k). The
575 operator shall give the Department at least sixty (60) days notice prior to changing methods
576 of financial assurance and may not actually change methods without the written approval of
577 the Department.

578 (j) Bankruptcy Notification. The operator of a nonmetallic mining site shall notify the

579 Department by certified mail of the commencement of voluntary or involuntary proceeding
580 under bankruptcy code, 11 USC, et seq., naming the operator as debtor, within ten (10) days
581 of commencement of the proceeding.

582 (k) Adjustment of Financial Assurance. Financial assurance may be adjusted when required
583 by the Department. The Department may notify the operator in writing that adjustment is
584 necessary and the reasons for it. The Department may adjust financial assurance based upon
585 prevailing or projected interest or inflation rates, or the latest cost estimates for reclamation.

586 41.9-3. The operator shall submit a legally binding commitment to faithfully perform all compliance
587 and reclamation work at the mine site that is required under this law.
588

589 **41.10. Public Notice and Right of Hearing.**

590 41.10-1. The Department shall, except as provided in 41.10-2, provide public notice for a public
591 hearing as set forth below:

592 (a) Public Notice.

593 (1) When the Department receives an application to issue a reclamation permit, it
594 shall publish a public notice of the application no later than thirty (30) days after
595 receipt of a complete application that satisfies 41.7-2.

596 (2) The notice shall briefly describe the mining and reclamation planned at the
597 nonmetallic mining site. The notice shall be published in the Kalihwisaks and shall
598 advise the following:

599 (A) The locations at which the public may review the application and all
600 supporting materials, including the reclamation plan.

601 (B) The time, place, whom, and manner in which views may be presented.
602 Said notice shall be published and posted for no less than ten (10) days prior
603 to the public hearing.

604 (3) Copies of the notice shall be forwarded by the Department to the owners of land
605 within twelve hundred (1,200) feet of the boundaries of the parcel or parcels of land
606 on which the site is located.

607 (b) Public Hearing. The Department shall provide interested persons a reasonable
608 opportunity to submit data, views, or arguments in writing in regards to an application for
609 a nonmetallic mining reclamation permit. It is the intent of this law that public hearings be
610 held in order to receive comment on the nature, feasibility and effects of the proposed
611 reclamation.

612 (1) Subsequent to the public comment period and prior to the Department's
613 recommendation to the Land Commission, the Department shall consider fully, all
614 oral and written comments concerning the proposed action.

615 (2) If a zoning-related public hearing is conducted on a proposed nonmetallic mine
616 site, the Department shall allow testimony on both the zoning-related and
617 reclamation-related matters. This opportunity shall fulfill the requirement for a
618 public hearing for a nonmetallic mining reclamation permit.

619 (3) The Department shall consider the reclamation-related testimony in the zoning-
620 related hearing in deciding on a permit application pursuant to this law.

621 41.10-2. Local Transportation-Related Mines. No public notice or informational hearing is required
622 for a nonmetallic mining reclamation permit issued to a local transportation-related mine pursuant

623 to 41.10-1.

624
625 **41.11. Alternative Requirements.**

626 41.11-1. *Scope of Alternative Requirements Approvable.* An operator of a nonmetallic mining site
627 may request an alternative requirement to the reclamation standard established in 41.6, if the
628 following criteria are met:

629 (a) The nonmetallic mining site, the surrounding property or the mining plan or reclamation
630 plan has a unique characteristic which requires an alternative requirement.

631 (b) Unnecessary hardship which is peculiar to the nonmetallic mining site or plan will result
632 unless the alternative requirement is approved.

633 (c) Reclamation in accordance with the proposed alternative requirement will achieve the
634 planned post-mining land use and long term site stability in a manner that will not cause
635 environmental pollution or threaten public health, safety or welfare.

636 41.11-2. *Procedures.*

637 (a) The operator of a nonmetallic mining site requesting an alternate requirement shall
638 demonstrate all the criteria in 41.11-1. This shall be submitted in writing to the Department.

639 (b) A request for an alternative requirement may be incorporated as part of an application
640 to issue or modify a nonmetallic mining reclamation permit.

641 41.11-3. *Transmittal of Decision on Request for Alternate Requirement.* The decision on a request
642 for alternate reclamation requirements shall be in writing to the applicant and shall include
643 documentation of why the alternate requirement was or was not approved.

644
645 **41.12. Permit Duration.**

646 41.12-1. A nonmetallic mining reclamation permit issued under this law shall last through operation
647 and reclamation of the nonmetallic mining site, unless suspended or revoked pursuant to 41.16.

648 41.12-2. If the mine operator is not the landowner, the reclamation permit duration shall not exceed
649 the duration of the mine lease unless the lease is renewed or the permit is transferred to a subsequent
650 lessee pursuant to 41.13.

651
652 **41.13. Permit Transfer.**

653 41.13-1. A nonmetallic mining reclamation permit issued under this law shall be transferred to a
654 new owner or operator upon satisfaction of the following conditions:

655 (a) The new permit holder submits to the Department proof of financial assurance and a
656 certification in writing that all conditions of the permit will be complied with.

657 (b) The new operator submits financial assurance and it has been accepted by the
658 Department and the Department makes a written finding that all requirements of the permit
659 and reclamation plan will be complied with. The previous operator shall maintain financial
660 assurance until the new operator has received approval and provided the financial assurance
661 under this section.

662
663 **41.14. Review.**

664 41.14-1. Before a permit and/or a plan can be approved or denied, the Department shall submit to
665 the Land Commission a written recommendation that the permit and/or plan be approved,
666 conditionally approved or denied.

667 (a) The Land Commission shall respond to the Department by agreeing with, disagreeing
668 with, or remaining silent on the recommendation of the Department.

669 (b) Failure of the Land Commission to act upon a recommendation within thirty (30) days
670 of the Department's recommendation shall be considered an approval of the
671 recommendation.

672 41.14-2. Any decision or action made under this law may be reviewed as set forth in this section.
673 Any person may obtain a contested case hearing under the Tribe's administrative procedures act
674 provided that:

675 (a) A substantial interest of the person is injured in fact or threatened with injury by agency
676 action or inaction;

677 (b) There is no evidence of legislative intent that the interest is not to be protected;

678 (c) The injury to the person requesting a hearing is different in kind or degree from injury to
679 the general public caused by the agency action or inaction; and

680 (d) There is a dispute of material fact.
681

682 **41.15. Permit Modification.**

683 41.15-1. *By Department.* A nonmetallic mining reclamation permit issued under this law may be
684 modified by the Department if it finds that the nonmetallic mining site is no longer in compliance
685 with this law. Such modification shall be by an order modifying the permit in accordance with this
686 section. This modifying order may require the operator to amend or submit new application
687 information, reclamation plan, proof of financial assurance or other information needed to ensure
688 compliance with this law.

689 41.15-2. *At the Operator's Option.* If an operator holds a reclamation permit issued under this law
690 and desires to modify such permit or reclamation plan approved under this law, it may request such
691 modification by submitting a written application to the Department. The application for permit or
692 plan modification shall be acted on using the standards and procedures of this law.

693 41.15-3. *Required by the Operator.* An operator that holds a reclamation permit issued under this
694 law shall request a modification of such permit if changes occur to the area to be mined, the nature
695 of the planned reclamation, or other aspects of mining required by the reclamation plan approved.
696 Such application for permit modification shall be acted on using the standards and procedures of this
697 law.

698 41.15-4. *Review.* All actions on permit modifications requested or initiated under this section are
699 subject to review under 41.14-2.
700

701 **41.16. Permit Suspension or Revocation.**

702 41.16-1. *Grounds.* The Department may suspend or revoke a nonmetallic mining reclamation
703 permit if it finds that the operator has done any of the following:

704 (a) Failed to submit a satisfactory reclamation plan within the time frames specified in this
705 law.

706 (b) Failed to submit or maintain financial assurance as required by this law.

707 (c) Failed on a repetitive and significant basis to follow the approved reclamation plan.

708 41.16-2. *Procedures.* If the Department finds grounds for suspending or revoking a nonmetallic
709 mining reclamation permit set forth in this section, it may issue an order suspending or revoking such
710 permit as set forth in 41.23-2.

711 41.16-3. *Consequences.*

712 (a) If the Department makes any of the findings in 41.16-1, it may suspend a nonmetallic
713 mining reclamation permit for up to thirty (30) days. During the time of suspension, the
714 operator may not conduct nonmetallic mining at the site, except for reclamation or measures
715 to protect human health and the environment, as ordered by the Department pursuant to
716 41.23-2.

717 (b) If the Department makes any of the findings in 41.16-1, it may revoke a nonmetallic
718 mining reclamation permit. Upon permit revocation, the operator shall forfeit the financial
719 assurance it has provided to the Department. The Department may use forfeited financial
720 assurance to reclaim the site to the extent needed to comply with this law and the applicable
721 reclamation ordinance.

722
723 **41.17. Annual Operator Reporting.**

724 41.17-1. Contents and Deadline.

725 (a) Annual reports that satisfy the requirements of this section shall be submitted by the
726 operators of nonmetallic mining sites.

727 (1) Contents. The annual report required by this section shall include all of the
728 following:

729 (A) The name and mailing address of the operator.

730 (B) The location of the nonmetallic mining site, including legal description,
731 tax key number or parcel identification number if available.

732 (C) The identification number of the applicable nonmetallic mining permit,
733 if assigned by the Department.

734 (D) The acreage currently affected by nonmetallic mining extraction and not
735 yet reclaimed.

736 (E) The amount of acreage that has been reclaimed to date, on a permanent
737 basis and the amount reclaimed on an interim basis.

738 (F) A plan, map or diagram accurately showing the acreage described in
739 41.17-1(a)(1)(D) and (E).

740 (G) The following certification, signed by the operator: "I certify that this
741 information is true and accurate, and that the nonmetallic mining site
742 described herein complies with all conditions of the applicable nonmetallic
743 mining permit."

744 (b) Deadline. The annual report shall cover activities for a calendar year and be submitted
745 within sixty (60) days following the end of the year.

746 (c) When Reporting May End. Annual reports shall be submitted by an operator for all
747 active and intermittent mining sites to the Department for each calendar year until
748 nonmetallic mining reclamation at the site is certified as complete pursuant to 41.20-3 or at
749 the time of release of financial assurance pursuant to 41.9-2(f).

750 41.17-2. The Department may, at its discretion, obtain the information required in 41.19-1 for a
751 calendar year by written documentation of an inspection it completes during a calendar year, as set
752 forth in this subsection. If the Department obtains and documents the required information, the
753 annual report need not be submitted by the operator. If the Department determines that the operator
754 need not submit an annual report pursuant to this section, it shall advise the operator in writing at

755 least thirty (30) days before the end of the applicable calendar year. In that case, the Department
756 shall require the operator to submit the certification required in 41.17-1(a)(1)(G).
757 41.17-3. *Retention of Annual Reports.* Annual reports submitted under this section or inspection
758 records that replace them under 41.17-2 shall be retained by the Department for at least ten (10) years
759 after the calendar year to which they apply.
760

761 **41.18. Annual Fees.**

762 41.18-1. *Areas Subject to Fees, Procedures and Deadline.* Operators of all nonmetallic mining sites
763 subject to reclamation permits issued under this law shall pay annual fees to the Department. Fees
764 paid under this section shall equal, as closely as possible, the costs of examination and approval on
765 nonmetallic mining reclamation plans and the inspection of nonmetallic mining sites.

766 41.18-2. Fees paid under this section shall be calculated based on the unreclaimed acres of a
767 nonmetallic mining site, as defined below:

768 (a) "Unreclaimed acre(s)" means those unreclaimed areas in which nonmetallic mining has
769 occurred and areas where nonmetallic mining reclamation has been completed but is not yet
770 certified as reclaimed under 41.9-2(f). However the term does not include any areas
771 described in 41.18-2(b).

772 (b) "Unreclaimed acre(s)" does not include:

773 (1) Those areas where reclamation has been completed and certified as reclaimed
774 under 41.20-3.

775 (2) Those areas previously affected by nonmetallic mining but which are not used
776 for nonmetallic mining.

777 (3) Those portions of nonmetallic mining sites which are included in an approved
778 nonmetallic mining reclamation plan but are not yet affected by nonmetallic mining.

779 (4) Areas previously mined but used later for a non-mining activity, such as
780 stockpiling of materials used for an industrial activity such as an asphalt plant,
781 concrete batch plant, block and tile operation or other industry that uses products
782 produced from nonmetallic mining.

783 (5) Those areas within a nonmetallic mining site which the Department has
784 determined to have been successfully reclaimed on an interim basis in accordance
785 with 41.20-2 and 41.20-3.

786 (6) Those areas not included in a nonmetallic mining site.

787 (c) Fees assessed pursuant to this section shall be based on unreclaimed acres at the end of
788 the year. Such fees apply to a calendar year or any part of a year in which nonmetallic
789 mining takes place, until final reclamation is certified as complete under 41.20. Fees shall
790 be paid no later than December 31st for the subsequent year.

791 (d) For mines that submit a reclamation permit application under 41.7-2, the first year's
792 annual fee shall be based upon the unreclaimed acres which are anticipated at the end of that
793 calendar year.

794 (e) If reclamation has already occurred on portions of a nonmetallic mining site, the fees for
795 such portions may be submitted with a request that they be held by the Department pending
796 certification of completed reclamation pursuant to 41.20-1. Upon such certification, the
797 Department shall refund that portion of the annual fee that applies to the reclaimed areas.
798 If the Department fails to make a determination under 41.20-1 within sixty (60) days of the

799 request, it shall refund that portion of the annual fee that applies to the reclaimed areas.
800

801 Table 1:
802 Annual Fees Collected by the Department

Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre	Annual Fee
1 to 5 acres [does not include mines <1 acre]	\$30
6 to 10 acres	\$60
11 to 15 acres	\$90
16 to 25 acres	\$120
26 to 50 acres	\$140
51 acres or larger	\$150

812
813 41.18-3. Reduced Fee for Inactive Mines. Any site on which no nonmetallic mining activity has
814 taken place in a calendar year shall be assessed a reduced fee, determined by the Department, for the
815 following calendar year.

816 41.18-4. Public Nonmetallic Mining. The annual fee requirements of this section do not apply to
817 nonmetallic mining conducted by the Tribe through its agencies or departments.
818

819 **41.19. Regulatory Reporting and Documentation.**

820 41.19-1. Reporting. The Department shall prepare a report by March 31st of each calendar year. The
821 reports shall include the following information for the previous year's nonmetallic mining
822 reclamation program:

- 823 (a) The total number of nonmetallic mining permits in effect.
- 824 (b) The number of new permits issued within the jurisdiction of the Department.
- 825 (c) The number of acres approved for nonmetallic mining and the number of acres newly
826 approved in the previous year.
- 827 (d) The number of acres being mined.
- 828 (e) The number of acres that have been reclaimed and have had financial assurance released
829 pursuant to 41.9-2(f).
- 830 (f) The number of acres that are reclaimed and awaiting release from the financial assurance
831 requirements of this section pursuant to 41.20-4(b) and (c).
- 832 (g) The number and nature of alternative requirements granted, permit modifications,
833 violations, public hearings, enforcement actions, penalties that have been assessed and bond
834 or financial assurance forfeitures.

835 41.19-2. Documentation. The Department shall, to the best of its ability, maintain the information
836 set forth below:

- 837 (a) The procedures employed by the Department regarding reclamation plan review, and the
838 issuance and modification of permits.
- 839 (b) The methods for review of annual reports received from operators.

- 840 (c) The method and effectiveness of fee collection.
841 (d) Methods for conducting on-site compliance inspections and attendant reports, records
842 and enforcement actions.
843 (e) Responses to citizen complaints.
844 (f) The method of and accuracy in determining the amount of financial assurance obtained
845 from the operator to guarantee reclamation performance.
846 (g) The maintenance and availability of records.
847 (h) The number and type of approvals for alternative requirements issued
848 pursuant to 41.11.
849 (i) The method of determining the success of reclamation in meeting the criteria contained
850 in the reclamation plan and subsequently releasing the financial assurance pursuant to 41.9-
851 2(f)(1).
852 (j) Any changes in Tribal regulations, ordinances, funding and staffing mechanisms or any
853 other factor which might affect the ability of the Department to implement its nonmetallic
854 mining reclamation program under this law.
855 (k) The amount of fees collected in comparison to the amount of money actually expended
856 for nonmetallic mining reclamation program administration.
857

858 **41.20. Completed Reclamation-Reporting, Certification and Effect**

859 41.20-1. *Reporting.* The operator of a nonmetallic mining site may certify completion of
860 reclamation for a portion or all of the nonmetallic mining site pursuant to a reclamation plan
861 prepared and approved pursuant to this law.

862 41.20-2. *Reporting of Interim Reclamation.* The operator of a nonmetallic mining site may report
863 completion of interim reclamation as specified in the reclamation plan for the site prepared and
864 approved pursuant to this law. Reporting of interim reclamation shall be done according to the
865 procedures in 41.20-1.

866 41.20-3. *Certification of Completed Reclamation.* The Department shall inspect a nonmetallic
867 mining site for which reporting of reclamation or interim reclamation has been submitted pursuant
868 to this subsection within sixty (60) days of receipt, and make a determination in writing in
869 accordance with 41.9-2(f)(3). If it is determined that interim or final reclamation is complete,
870 including revegetation as specified in a reclamation plan that conforms with 41.8, the Department
871 shall issue the mine operator a written certificate of completion.

872 41.20-4. *Effect of Completed Reclamation.* If reclamation is certified by the Department as
873 complete under 41.20-3 for part or all of a nonmetallic mining site, then:

874 (a) No fee shall be assessed under 41.18 for the area so certified.

875 (b) The financial assurance required by 41.9 shall be released or appropriately reduced in the
876 case of completion of reclamation for a portion of the mining site.

877 (c) For sites which are reported as interim reclaimed under 41.20-2 and so certified under
878 41.20-3, financial assurance for reclaiming the certified area shall be reduced.

879 41.20-5. *Effect of Inaction Following Report of Completed Reclamation.* If no written response as
880 required by 41.20-3 for an area of the mine site reported as reclaimed or interim reclaimed is given
881 within sixty (60) days of receiving such request, any annual fee paid to the Department for it under
882 41.18 shall be refunded.
883

884 **41.21. Permit Termination.**
885 41.21-1. When all final reclamation required by a reclamation plan conforming to 41.8 and required
886 by this law is certified as complete pursuant to 41.9-2(f) and 41.20-3, the Department shall issue a
887 written statement to the operator of the nonmetallic mining site, thereby terminating the reclamation
888 permit.
889

890 **41.22. Right of Entry and Inspection.**

891 41.22-1. For the purpose of ascertaining compliance with the provisions of this law, any authorized
892 officer, agent, employee or representative of the Department may inspect any nonmetallic mining
893 site subject to this law as provided below:

894 (a) Any person who enters the site under this right of inspection shall obtain training and
895 provide their own safety equipment needed to comply with any applicable laws or regulations
896 controlling persons on the nonmetallic mining site.

897 (b) No person may refuse entry or access onto a nonmetallic mining site of a duly authorized
898 officer, employee or agent of the Department who presents appropriate credentials to inspect
899 the site for compliance with the nonmetallic mining reclamation permit or this law.
900

901 **41.23. Violations.**

902 41.23-1. *Warnings.* The Department shall issue a warning to an operator or owner before issuing
903 an order or a citation if a violation is committed under this Law, including:

904 (a) Refusing entry or access onto a nonmetallic mining site

905 (b) Activity that violates the approved plan unless the owner or operator immediately ceases
906 the activity.

907 41.23-2. *Orders.* If an operator or owner continues to violate this Law after the Department issues
908 a warning, the Department may issue an order requiring the operator or owner to comply with this
909 Law.

910 (a) An order may suspend or revoke a nonmetallic mining reclamation permit pursuant to
911 41.16, or direct an operator to immediately cease an activity regulated under this law.

912 (b) Any person who violates an order issued under this section may be required to forfeit not
913 less than \$25 nor more than \$5,000 for each violation. Each day of continued violation is
914 a separate offense. While an order issued under this section is suspended, stayed or enjoined,
915 this penalty does not accrue.

916 41.23-3. *Citations.* The Department, or designee, may issue a citation to collect fines to enforce this
917 law, a permit issued pursuant to this law or a reclamation plan approved under this law. The
918 issuance of a citation under this subsection shall not preclude proceeding under any other ordinance
919 or law relating to the same or any other matter. Proceeding under any other ordinance or law relating
920 to the same or any other matter shall not preclude the issuance of a citation under this subsection.

921 41.23-4. *Appeals.* A person who is subject to a citation issued pursuant to this section shall have
922 sixty (60) days to either appeal the citation to the Land Commission for review or pay the fine.
923

924 End.

925 Adopted BC-