

Agenda Item Report



Winnebago County
The Wave of the Future

DATE: March 22, 2022

FROM: Jerry Bougie, Director of Planning and Zoning

RE: Committee review and action on resolution and accompanying agreement authorizing Winnebago County to enter into an updated agreement with East Central Regional Planning Commission to administer state mandated requirements of NR-135, Wisconsin Administrative Code, and the required County Non-metallic Mining Ordinance.

General Description:

This is a contractual renewal and update to a long-standing (since July 2001) multi-county cooperative agreement with East Central Regional Planning Commission (ECRPC) to administer state mandated requirements for Non-metallic Mining reclamation (Quarry) operations.

Action Requested:

Motion to approve resolution and accompanying agreement authorizing Winnebago County to enter into an agreement with the ECRPC to administer the state-mandated requirements of Wisconsin Administrative Code NR-135 and the related County Non-metallic Mining ordinance.

Procedural Steps:

(Show each level of committee and board approval needed, with meeting dates.)

Committee of Jurisdiction: <u>Planning & Zoning</u>	Meeting date: <u>April 8, 2022</u>
Action taken: _____	Vote: _____
Other Committee: _____	Meeting date: _____
Action taken: _____	Vote: _____
County Board _____ X _____	Meeting date: <u>April 26, 2022</u>

Background:

This is a State mandated program under Chapter 295, Wis. Stats., and NR-135, Wisconsin Administrative Code. It requires all Counties in the state to administer and enforce uniform standards for reclamation activities on Non-metallic mining (Quarry) sites. This mandate is codified in Chapter 20, Winnebago County General Code. In 2001, five Counties in the East Central Regional Planning area (i.e. Winnebago, Outagamie, Calumet, Shawano and Waupaca) entered into a cooperative agreement with ECRPC to have that agency administer each County's Non-metallic mining program and ordinance. ECRPC employed a Quarry Reclamation Specialist to effectively administer the Non-metallic program for each county which allowed for significant cost and staffing resource savings for each County. Over the past 21 years, East Central staff has provided quality, efficient and professional administration of the NR-135 program for the Counties under the agreement. After 21 years, renewal of the agreement has now become necessary to update the agreement to current times.

Policy Discussion:

Administering the NR-135 program standards requires specialized expertise and staffing that many Counties do not have, including Winnebago County. Therefore, instead of all five counties having to

provide their own staffing and related costs to administer the NR-135 mandates, the Counties gain significant cost savings, efficiencies and savings on staffing resources by entering into the cooperative agreement with ECRPC to ensure the NR-135 program mandates are met and carried out effectively. ECRPC employs a full-time Reclamation Specialist that serves the five County area under the agreement. Some elements of the original agreement have become out-of-date and require updating, such as provisions for GIS information, removal of start-up language, updated permitting procedures and provisions for Counties that may decide to withdraw from the agreement. These provisions have been updated in the newly proposed agreement.

Fiscal Note: There is no cost to the County for participating in the cooperative agreement. Pursuant to State Law (Ch 295 and NR-135) the program is self-funded by the quarry operators based on the active acres being mined. The annual per acre fee is derived by ECRPC on an annual basis for each County to ensure the costs to administer the program for that year are completely covered. The County Planning and Zoning Committee subsequently reviews and adopts the per acre fee and related budget submitted by ECRPC for each given year.

Attachments:

Draft Resolution and updated agreement.

RESOLUTION NO. XX-22

AUTHORIZING WINNEBAGO COUNTY TO ENTER INTO AN AGREEMENT WITH THE EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION TO ADMINISTER WISCONSIN ADMINISTRATIVE CODE NR-135 AND REQUIRED LOCALLY ADOPTED NON-METALLIC MINING RECLAMATION ORDINANCE.

TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS

WHEREAS, Winnebago County is a member of the East Central Wisconsin Regional Planning Commission (Commission);

WHEREAS, the Counties of Calumet, Outagamie, Shawano, Waupaca, and Winnebago (Counties) have previously entered into an agreement with the East Central Wisconsin Regional Planning Commission to administer the Counties respective Non-Metallic Mining Reclamation Ordinances on July 27, 2001, and;

WHEREAS, an updated agreement has been prepared for consideration for the Winnebago County Board.

WHEREAS, the agreement identifies functions and duties of the Commission with respect to the issuance of all permits for the reclamation of non-metallic mines within the five Counties, and;

WHEREAS, the agreement identifies the terms and conditions for the partial transfer of authority, under Wisconsin State Statutes 59.52(7), 59.69(2)(d), and 66.0309, from Calumet, Outagamie, Shawano, Waupaca, and Winnebago Counties to the East Central Wisconsin Regional Planning Commission to administer portions of the individual Counties' adopted ordinances as required under Wisconsin Administrative Code NR-135 for regulation and permitting of non-metallic mining reclamation plans.

NOW THEREFORE, the following resolution is presented by the Planning and Zoning Committee to the County Board.

RESOLVED, that the Winnebago County Board of Supervisors does hereby approve the updated agreement as more fully set forth in Exhibit A, which is attached and incorporated by reference; and

FURTHER RESOLVED, that the Winnebago County Clerk be directed to forward a copy of the signed resolution to the Executive Director of the East Central Wisconsin Regional Planning Commission.

Effective Date: (INSERT DATE), 2022

Submitted By: Planning and Zoning Committee

Signed: _____
Winnebago County Board Chairperson

Winnebago County Clerk

Winnebago County Executive

**AGREEMENT FOR THE ADMINISTRATION OF CERTAIN
COUNTY-ADOPTED NON-METALLIC MINING RECLAMATION ORDINANCES,
AS REQUIRED BY WISCONSIN ADMINISTRATIVE CODE NR-135,
BY THE EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION**

BASIS OF AGREEMENT

This agreement spells out the terms and conditions for the partial transfer of authority, under Wisconsin State Statutes 59.52, 59.69(2)(d), and 66.0309, from Calumet, Outagamie, Winnebago, Waupaca, and Shawano Counties (County/Counties) to the East Central Wisconsin Regional Planning Commission (Commission) to administer portions of the individual County adopted ordinances as required under Wisconsin Administrative Code NR-135 for regulation and permitting of non-metallic mining reclamation plans. This agreement is entered into based on the following basic provisions:

1. Each County that is part of this agreement has individually adopted, with an effective date of July 1, 2001, a Non-Metallic Mining Reclamation Ordinance (Ordinance):
 - a) The Counties provide adequate notice to the Commission should amendments to the Ordinance be sought after its adoption. Such individual amendments should be considered by all Counties that are part of this agreement in order to foster consistency within the program.
 - b) The Counties shall periodically entertain amendments to the Ordinance as suggested by the Commission during administration of the Ordinance. These changes may be required due to:
 - Fee structures and administrative budget costs.
 - Amendments made to Wisconsin Administrative Code, Chapter NR-135.
 - Response to Wisconsin Department of Natural Resources program audits/reviews.
2. Notice to the Commission of future proposed amendments to other County or local land use plan and ordinance amendments which may affect the Commission's administration of the Ordinance.
3. The Counties agree to provide the Commission, at no cost, the following information in a timely manner while the Agreement is in effect:
 - a) All current information (text, maps, digital files) on existing County and local Land Use Plans and Zoning Ordinances within the County, copies of applicable mining site information (text, maps, digital files), and; copies of regulatory requirements which may have previously been approved by the County or local units of government for the site.

The term "Commission" as used in this agreement when referring to permit issuance actions means one or more staff persons delegated with decision-making authority as outlined by the Commission in resolution form.

AGREEMENT TASKS / RESPONSIBILITIES

Upon adoption of this Agreement and with respect to the individual Non-Metallic Mining Reclamation Ordinances adopted by the Counties, the Commission will conduct the following activities and tasks.

Financial Management / Record-Keeping Activities

The Commission will establish the necessary financial management and record-keeping methods for the administration of the individual Ordinances and Chapter NR-135.

Geographic Information Systems (GIS) / Database Development

The Commission has developed and will maintain the necessary Geographic Information System and database programs to assist in the administration of the non-metallic mining reclamation program. Such programs will include all pertinent mapping and field data collection, Unmanned Aerial System (UAS) operation data, operator contact information, application tracking, permit data, and record-keeping information related to the implementation of the program.

Permit Application / Administrative Procedure Development

The Commission has developed the following materials with input and assistance from the Counties:

- A single application form for submission of new mine reclamation permits.
- An application form for the modification of a permit or reclamation plan.
- An operator's annual report form which contains, at a minimum, the required information set forth in Section 25 of the adopted individual Ordinance.
- Any other written procedures necessary for the coordinated administration of the individual Ordinances and Chapter NR-135.

Additional materials and systems pertaining to the application and permitting process have and will be developed by the Commission as deemed necessary to administer the Ordinance.

Ordinance Defined Responsibilities, Authorities, and Tasks

The essential nature of the services provided herein will involve the Counties contracting with the Commission for staff services related to administering each individual County's Ordinance. Authorities and tasks which are part of the overall NR-135 program requirements, but whose responsibility will remain with the individual Counties, are noted in this section. The Commission will establish additional procedures as necessary to continuously implement the program and to ensure the Counties' compliance with Chapter NR-135. Additionally, the Commission will coordinate all plan reviews and permitting actions with appropriate local and county departments as well as State agencies as necessary.

Mine Reclamation Permits

1. The Commission will accept applications and fees for mine reclamation permits.
2. The Commission will review applications for mine reclamation permit submittals, including a determination of need for a public informational hearing, with respect to the provisions of the Ordinance adopted by the County within which the site lies.
3. The Commission will provide public notice and the opportunity for a public informational hearing as required by the Ordinance for mine reclamation permits. All costs for such hearings will be borne by the Commission. Notices shall be published as a class 1 notice pursuant to s. 985.07(2), Stats., in the official newspaper of the County in which the site resides.

Copies of the notice shall be forwarded by the Commission to the County and the Municipality within which the site lies.

- a) The County or applicable local zoning board.
- b) The County and applicable local planning organization.

- c) The County land conservation officer.
 - d) Owners of land within 300 feet of the boundaries of the parcel or parcels of land on which the site is located. The Counties shall provide the Commission with the necessary property owner information under this section at no cost as needed.
- 4. If the public informational hearing is conducted as part of a local planning or zoning hearing, a representative of the Commission will attend the hearing and provide information pertaining to the reclamation permit application as necessary. The County or local unit of government shall forward testimony to the Commission for consideration prior to reclamation permit issuance. The County or local unit of government shall bear all costs and responsibilities associated with this type of hearing except the cost of the notice requirement.
 - 5. The Commission will make determinations on mine permit applications no sooner than 30 days nor later than 90 days following receipt of the complete reclamation permit application unless a public informational hearing is held, in which case the decision shall be no later than 60 days after completing the public informational hearing.
 - 6. The Commission shall affirm in writing its decision whether to approve each submittal and shall have the authority to issue the non-metallic mining reclamation permit.

Expedited Permits

- 7. The Commission will accept applications and annual fees for “expedited” permits.
- 8. The Commission will review the “expedited” permit submittals with respect to the provisions of the Ordinance adopted by the County within which the site lies.
- 9. The Commission shall, upon satisfactory review against the Ordinance criteria, have the authority to issue an “expedited permit” to any transportation related borrow site within 7 days of submittal. The Commission will not collect mine plan review fees, but will charge annual fees for the “expedited” permit.
- 10. The Commission will inform the applicant, in writing, of the estimated date for decision on issuance of the permit. If the applicant then elects not to proceed with the expedited review, the Commission will return the expedited portion of the fee.

Permit Issuance Authorities

- 11. The Commission shall have the authority to issue a permit or approve a reclamation plan subject to conditions if needed to assure compliance with the provisions of the Ordinance and Chapter NR-135.
- 12. The Commission shall have the authority to deny an application to issue a non-metallic mining reclamation permit within the time frame for permit issuance based on criteria set forth in the ordinance and NR-135. The Commission shall make this determination in writing and shall contain documentation of reasons for denial.

Alternative Requirements

- 13. The Commission will accept an operator’s request for an alternative requirement to the reclamation standards established in the Ordinance.
- 14. The Commission shall have the authority to approve an alternative requirement to the reclamation standards based on the individual County’s recommendation using the process specified in the Ordinance. A Commission representative will attend county related meetings regarding alternative requirement requests. The Counties may submit costs related to such meetings for payment by the Commission using program

revenues. The Commission may require the applicant to reimburse such cost or a portion thereof based on the Commission's discretion.

15. Upon final decision, the Commission shall transmit the decision related to a request for alternative reclamation requirements in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.
16. The Commission shall provide written notice to the Wisconsin Department of Natural Resources at least 10 days prior to any public hearing on a request for an alternative requirement and shall also provide a copy of any written decision on alternative requirements within 10 days of issuance.

Permit Transfers and Modifications

17. The Commission may transfer any non-metallic mining reclamation permit to a new operator upon submittal of proof of financial assurance and a certification in writing by the new permit holder that they will comply with all conditions of the permit. At the time of transfer, the Commission has the authority to modify permit conditions as further outlined in this section. The Commission will make a written determination of all conditions of the permit needed for compliance for each transfer.
18. The Commission will accept permit modification applications and will review modification requests against the standards contained in the individual County Ordinance and Chapter NR-135.
19. The Commission shall have the authority to modify a non-metallic mining reclamation permit if it finds that, due to changing conditions, the non-metallic mining site is no longer in compliance with Chapter NR-135, Wisconsin Administrative Code, or the individual County Ordinance. Such modification shall be by written order modifying the permit and may require the operator to amend or submit new application information, reclamation plan, proof of financial assurance, or other information needed to ensure compliance with Chapter NR-135.

Financial Assurance

20. The Commission may develop a standard cost index for reviewing the financial assurance needs for site reclamation.
21. The Commission will provide written notification to the operator of the amount of financial assurance as required by the ordinance after reclamation plan review.
22. The operator shall file a financial assurance with Commission, payable exclusively to the Commission. The amount of financial assurance shall equal as closely as possible the cost to the Commission of hiring a contractor to complete either final reclamation or progressive reclamation according to the approved reclamation plan.
23. The amount of financial assurance shall be reviewed annually by the Commission to assure it equals outstanding reclamation costs. Written notification will be provided to the operator by the Commission regarding any necessary adjustments to the financial assurance.
24. The Commission shall, at its discretion, accept a blend of different options for financial assurance including a lien on the property on which the non-metallic mining site occurs or a combination of financial assurance methods.

Permit Suspension, Revocation, Orders and Citations

The Commission will not provide services through this Agreement for the direct enforcement of the Counties' individual Ordinances. The Commission will provide enforcement support by immediately reporting a violation(s) of the Ordinance and NR-135 to the County and/or applicable local unit of government and by providing the necessary information and documentation regarding the violation(s).

25. The Commission will provide a written report and recommendation to the County and/or applicable local unit of government immediately upon discovery of any Ordinance violation. The County, upon recommendation by the Commission, may issue orders, special orders suspending or revoking a permit, or issue citations per their authority.
26. The Commission shall assist the Counties as necessary with respect to contested case hearings, should they arise.
27. Costs incurred by the Counties for enforcement related actions will be covered through the mechanisms defined in the Ordinance.
28. Should the County determine that a permit be revoked, the operator shall forfeit the financial assurance it had provided to Commission. The Commission would then use the forfeited financial assurance to reclaim the site to the extent needed to comply with Chapter NR-135 and the ordinance.

Reclamation Completion

29. The Commission will accept written requests from operators for determination of completed reclamation, shall inspect the site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a certification determination in writing to the operator.
30. The Commission will conduct on-site inspections for completion of site reclamation using quantifiable standards. The Commission shall obtain training and provide their own safety equipment needed to comply with any federal, state, or local laws or regulations controlling persons on the non-metallic mining site.
31. The Commission will prepare a written report of the inspection including necessary documentation.
32. If it is determined that interim or final reclamation is complete, including re-vegetation as specified in the reclamation plan, the Commission shall have the authority to issue a certificate of completion and shall release the financial assurance or appropriately reduce the financial assurance in the case of reclamation of a portion of the mining site. The Commission has the authority to partially release the financial assurance if it determines that compliance with a portion of the reclamation plan has been achieved and requires no waiting period. The Commission will notify each respective County at the time of final certification.
33. The Commission shall be contacted by the operator per the ordinance requirements for any modifications to the financial assurance. The Commission shall review and provide written approval/denial of proposed financial assurance modifications.

Annual Operator Reporting

34. The Commission shall receive and review annual reports from the operators until non-metallic mining reclamation at the site is certified as complete pursuant to the ordinance and Chapter NR-135 or at the time of final release of financial assurance.

35. Annual reports or inspection records submitted under the ordinance shall be retained by Commission for at least 10 years after the calendar year to which they apply. These records, or complete and accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities.

Fee Establishment

Non-Metallic Mining Reclamation Ordinance Fees have been determined by the Counties and the Commission prior to the signing of this Agreement and are to be consistent amongst the individual Counties' Ordinances. The following tasks relate to the periodic review of the fee structure:

36. Counties shall, along with the ordinance, adopt a separate Fee Schedule by reference, to eliminate the need for public hearings (on an ordinance modification) should the need for fee modifications arise.
37. The Commission will monitor program costs as related to fees and recommend to the Counties adjustments to such fees on an annual basis. The Commission will provide each County an updated fee schedule to reflect program costs on an annual basis and shall make the fee schedule publicly available.
38. The Commission shall annually document in writing its estimated program costs and the need for fees to cover program costs. This documentation shall be available for public inspection at Commission offices.
39. If reclamation has already occurred on portions of a non-metallic mining site, the fees for such portions may be submitted with a request that they be held by the Commission pending certification of completed reclamation. Upon such certification, the Commission shall have the authority to refund that portion of the annual fee that applies to the reclaimed areas. If the Commission fails to make a determination within 60 days of the request, it shall refund that portion of the annual fee that applies to the reclaimed areas.
40. The Commission shall distribute fee shares to the WDNR as required by the Ordinance and Chapter NR-135.

Regulatory Reporting and Documentation.

41. The Commission shall prepare and send a quarterly report to each County and an annual report to the Wisconsin Department of Natural Resources by March 31st containing the required information as identified in the Ordinance and Chapter NR-135 for the previous period's non-metallic mining reclamation program within each County.
42. The Commission shall to the best of its ability maintain the information set forth below and make it available to the Wisconsin Department of Natural Resources for that agency's audit of the Counties' reclamation programs pursuant to Chapter NR-135.
- a) Documentation of compliance with Chapter NR-135, Wisconsin Administrative Code, and this Agreement.
 - b) The procedures employed by the Commission regarding reclamation plan review and the issuance and modification of permits.
 - c) The methods for review of annual reports received from operators.
 - d) The method and effectiveness of fee collection.
 - e) Procedures to accurately forward the Wisconsin Department of Natural Resources' portion of collected fees in a timely fashion.

- f) Methods for conducting on-site compliance inspections and attendant reports, records, and enforcement actions.
- g) Responses to citizen complaints.
- h) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.
- i) The maintenance and availability of records.
- j) The number and type of approvals for alternative requirements issued.
- k) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance.
- l) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the County or the Commission to implement its non-metallic mining reclamation program under this chapter.
- m) The amount of fees collected in comparison to the amount of money actually expended for non-metallic mining reclamation program administration.
- n) Any other performance criterion necessary to ascertain compliance with Chapter NR-135, Wisconsin Administrative Code.

43. When all final reclamation required by a reclamation plan is completed, the Commission shall have the authority to issue a written statement to the operator of the non-metallic mining site, thereby terminating the reclamation permit.

ADDITIONAL ACTIVITIES

The following activities and their associated costs shall be considered as necessary administrative costs for the purposes of the program fee determination and subsequent fee adjustments.

1. The Commission will provide technical assistance where appropriate to improve compliance with or administration of the Ordinance to the Counties, their local units of government, or non-metallic mining operators within the Counties.
2. The Commission shall also promote the awareness of the Ordinance and its environmental importance through various information and education activities directed at both operators and the general public within the Counties.
3. The Commission may require additional training or continuing education to remain knowledgeable about the non-metallic mining industry and reclamation technologies.

LIABILITY & INSURANCE PROVISIONS

The Commission shall authorize, by resolution, no more than two staff persons that will have the authority to issue permit decisions under this program. Those two staff persons, and the Commission as a whole, shall be covered by appropriate levels of liability insurance as deemed necessary by the effective date of the Agreement, through either the Commission's or Counties' insurance provider.

TERMS OF AGREEMENT

This Agreement shall be effective on _____, 2022 and shall terminate upon one of the following conditions:

1. One or more Counties may end participation in the agreement provided that the Commission and other Counties which are part of this Agreement are notified in writing of the termination at least 120 days (four months) prior to becoming effective. The Commission will work with the balance of the Counties to determine if the program is still feasible with the reduction in participants.
2. If two or more of the participating Counties request termination of the Agreement, the Commission may terminate the Agreement. Written notice of the termination will be made to all Counties at least 120 days prior to becoming effective.
3. The Agreement may be terminated upon the unanimous decision of all Counties which are part of this Agreement and the Commission.
4. The Commission may choose to terminate the Agreement at any time provided that the Commission notifies all Counties in writing at least 120 days (four months) prior to becoming effective.

Modifications and updates to the Agreement may be sought from time to time by one or more of the Counties and/or the Commission. The Commission and the Counties may only make modifications to the Agreement upon the mutual consent of all parties.

Should individual units of government (towns, villages, cities) within these counties develop and adopt their own non-metallic mining reclamation program and ordinance under Chapter NR-135 after the approval of this agreement, the Commission shall defer all responsibilities for activities and authorities under this agreement to the local unit of government for such sites. In doing so, adjustments may be necessary to the fee structure depending on the number of sites removed from the regional program.

Additional Counties may be added to this agreement at a later date subject to the review and approval of all signatories of this agreement. In addition, the Commission shall pass a resolution in order to add any additional Counties to the Agreement.

EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION:

Jeff Nooyen, Chair
East Central Wisconsin Regional Planning Commission

Melissa Kraemer Badtke, Executive Director
East Central Wisconsin Regional Planning Commission

COUNTIES:

Alice Connors, Chair
Calumet County

Jeff Nooyen, Chair
Outagamie County

Tom Kautza, Chair
Shawano County

Dick Koeppen, Chair
Waupaca County

Shiloh Ramos, Chair
Winnebago County