

ORDINANCE #2013-1
Town of Ellsworth
County of Pierce

THE TOWN OF ELLSWORTH
NONMETALLIC MINING LICENSING ORDINANCE

The Town Board of the Town of Ellsworth, Pierce County, Wisconsin, does ordain as follows:

Section 1. Title

This ordinance shall be cited as the “Town of Ellsworth Nonmetallic Mining Ordinance” and hereinafter referred to as “this ordinance.”

Section 2. Authority

This ordinance is adopted by the powers granted to the Town of Ellsworth by the Town’s adoption of Village powers under Wis. Stat. §60.10 and §61.34. Any amendment, repeal or re-creation of the statutes relating to this ordinance made after the effective date of this ordinance is incorporated into this ordinance by reference on the effective date of the amendment, repeal or re-creation.

Section 3. Purpose and Intent

The purpose of this ordinance is to regulate Nonmetallic Mining operations in order to protect public health and safety, to preserve the scenic beauty of the Town’s landscapes and environment, to protect the public from damage to both the quantity and quality of Groundwater and Surface Waters, to protect the public from degraded air quality, to maintain existing night sky lighting levels, to minimize or prevent adverse impacts from on-Site and off-Site operations, and to promote the general welfare of the people and communities within the Town of Ellsworth. In addition, the intent of this ordinance is to ensure the fair and clear administration and enforcement of this ordinance, to provide penalties for the violations of the provisions of this ordinance, and to ensure remedies for damages that result from Nonmetallic Mining operations that are in violation of this ordinance or any conditions set forth in Licenses granted under this ordinance.

Section 4. Applicability and Scope

- (1) Definitions found in Section 5 of this ordinance apply to the Applicability and Scope.
- (2) This ordinance shall apply to all Nonmetallic Mining, Manufacturing Facility operations and Mine Sites within the Town of Ellsworth that commenced operations after the effective date of this ordinance except as provided herein.
- (3) This ordinance shall not apply to Mine Sites that have been in operation prior to the effective date of this ordinance, except that:
 - (A) If the operator of a pre-existing mine located in the Town seeks to conduct operations

aimed at producing a product for sale or use different in kind from that produced by its past operations, then the licensing requirements and other provisions set forth in this ordinance shall apply.

- (B) If the operator of a pre-existing mine seeks to make any changes to existing mining operations including, but not limited to, the addition of a Manufacturing Process or Manufacturing Facility, excavating below Bedrock or the Water Table, enlarging the size of the mine site, and/or using Blasting materials, then the licensing requirements and other provisions set forth in this ordinance shall apply.
- (4) This ordinance shall not apply to the following Nonmetallic Mining operations:
- (A) Excavations or grading conducted for the construction, re-construction, maintenance or repair of a highway, railroad, or any other transportation facility used by the public, i.e. borrowed pit for such projects.
 - (B) Grading conducted for preparing a construction site not associated with Nonmetallic Mining or Manufacturing Facilities or restoring land following a flood or natural disaster.
 - (C) Excavations for building construction purposes conducted on the building site of any site not part of a Nonmetallic Mine or Manufacturing Facility.
 - (D) Nonmetallic Mining at Sites where less than one (1) acre of total affected acreage occurs over the life of the mine and does not excavate below twenty (20) feet above the Water Table.
 - (E) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (F) 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.

Section 5. Definitions

- (1) **“A-Weighted”** means a specific weighting of the sound pressure level for the purpose of determining human response to sound as described in American National Standards Institute (ANSI) S1.4-1983.
- (2) **“Adjacent Landowner”** means a Landowner within one (1) mile of the proposed Mine Site, regardless of whether there is a residence or other structure on the property.
- (3) **“Adjoining Landowner”** means a Landowner whose property lies directly next to the proposed Mine Site, regardless of whether there is a residence or other structure on the

property.

- (4) **“Administration Fee”** means the portion of the License fee paid by the Operator to cover the costs incurred by the Town to monitor the Nonmetallic Mining and/or Manufacturing Process. Such monitoring will utilize the Engineer, or any other required consultant, and all applicable data to assure that the standards of this ordinance are being met over the term of the License.
- (5) **“Application Fee”** means the portion of the License fee paid by the Operator for the License that covers the cost of meetings, published notices, mailings, the Engineer’s consultation, additional Town Clerk or other Town official’s costs and other fees related to reviewing and acting on the License application.
- (6) **“Background Sound Level”** means the A-Weighted sound level which is exceeded ninety (90) percent of the time during the period of observation, during which times sounds from routine motor vehicular traffic and other transient sources is inaudible. The period of observation need not necessarily be contiguous; however, the period of observation must be at least ten (10) minutes of duration.
- (7) **“Bedrock”** means consolidated rock and unconsolidated rock above the consolidated rock, and is to be determined by core samples.
- (8) **“Berm”** means an earthen wall used to control surface runoff, to conceal from view the Nonmetallic Mining, or acts as an effective obstacle to entry.
- (9) **“Blasting”** means any method of loosening, moving or shattering masses of matter by use of an explosive.
- (10) **“Buffer Area”** means an area of undisturbed landscape as found before Nonmetallic Mining.
- (11) **“County”** means the County of Pierce, Wisconsin, and includes the County’s officers, employees, and agents where appropriate.
- (12) **“County Highway”** means any segment, right of way, or easement of a Public Highway which is maintained by the County.
- (13) **“Discharges”** means any measurable, natural or man-made, release of water, sediment or other particulates into the environment.
- (14) **“Engineer”** means the engineering consultant(s) representing the Town to review, analyze and advise on all engineering, geological, hydrology, watershed, emissions, Erosion control, traffic, paving, roads, lighting, utilities, security, Blasting, environmental, safety, and Reclamation concerning the Nonmetallic Mining or Manufacturing Process operation.
- (15) **“Erosion”** means the process by which material is removed from a region of the Earth’s surface by wind, rain, water, ice, down-slope creep of soil and other material under the force of gravity; or by any natural means where the earth is deposited away from its original location.

- (16) **“Forest”** means an area with a high density of trees.
- (17) **“Forest Product”** means any material derived from a Forest for commercial use, including, but not limited to lumber, paper, fuel, bedding for livestock, or Erosion control matting.
- (18) **“Fugitive Dust”** or **“Dust”** means any particles lifted into the ambient air caused by man-made activities such as the movement of soil, vehicles, equipment, or Blasting. Fugitive Dust also shall include particles lifted into the ambient air caused by wind over excavated areas that has had its natural vegetative ground cover removed by the Nonmetallic Mining.
- (19) **“Grading”** means the preparation of land in order to change its use, prevent Erosion, or Reclamation of a Site.
- (20) **“Groundwater”** means any of the waters of the State, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil.
- (21) **“Infrastructure Agreement”** or **“Agreement”** means an agreement by which the Town and/or County, the Landowner and the Operator agree in detail to all the matters which the provisions of this ordinance require in relation to the required improvements and/or maintenance to Public Highways, utilities and other public infrastructure.
- (22) **“Landowner”** means the Person who has title to land in fee simple or who holds a land contract for the land.
- (23) **“Light Pollution”** means alteration of natural light levels in the outdoor environment owing to artificial light sources at the Nonmetallic Mining location.
- (24) **“Manufacturing Facility”** is the place on or off the extraction Site where the Manufacturing Process takes place. It is to include all Manufacturing Process equipment and processes used to produce the end-product(s) and all Site built or modular offices and buildings, parking lots, driveways, access roads, lighting, sheds, storage, stockpiling, above and below grade Erosion and pollution control measures, equipment, earthen works and structures, all energy source storage, transmittance, metering, switching, and usage equipment, or any other related structures.
- (25) A **“Manufacturing Process”** means any and all operations on and with extracted material or other material at a Manufacturing Facility, including but not limited to any quality control and assurance, chemical analysis, material property analysis, water usage, holding, clarification, sedimentation, infiltration or settling methods, tanks, basins or ponds, all filtering and backwashing or other filter cleaning apparatus or methods, precipitating methods, crushing, separating, washing, screening, dewatering, blending, chemical addition, drying, storage, stockpiling, above and below grade Erosion and pollution control measures and monitoring, all associated energy or fuel source utilization, together with the conveyance of materials to a Manufacturing Facility on or off-Site.
- (26) A **“Mine Site”** or **“Site”** means land from which mineral aggregates or Nonmetallic Minerals

will be extracted for sale or use by the Operator, structures, equipment, storage facilities, stockpiles, Wells, Berms, Erosion control and monitoring equipment and structures, private roads or haulage ways associated with Nonmetallic Mining operation and Manufacturing Facility; and all contiguous lands to the Nonmetallic Mining operation under common ownership or control of the Landowner or Operator.

- (27) **“Nonmetallic Mineral(s)”** means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic Minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- (28) **“Nonmetallic Mining”** means any or all of the following:
- (A) Constructing any buildings or storage sheds for the purposes of mining operations.
 - (B) Removing and/or relocating Topsoil or Overburden for the purpose of Nonmetallic Mining.
 - (C) Extraction from the earth of mineral aggregates or Nonmetallic Minerals, including drilling and Blasting as well as associated activities such as excavation, Grading, and dredging of such materials.
 - (D) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, drying, separation, blending or the like of the mineral aggregates or Nonmetallic Minerals obtained by extraction from the mining Site or with materials transferred from off-Site.
 - (E) Manufacturing processes aimed at producing nonmetallic products for sale or use by the Operator.
 - (F) Stockpiling of nonmetallic products for sale or use off-Site and stockpiling of Waste Materials.
 - (G) Transport of the extracted Nonmetallic Minerals, finished products or Waste Materials to or from the extraction Site.
 - (H) Disposal of Waste Materials.
 - (I) Reclamation of the mining extraction Site.
- (29) **“Operator”** or **“Applicant”** means any Person who is engaged in, or who has applied for a License to engage in Nonmetallic Mining or Manufacturing Process, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
- (30) **“Operator’s License”** or **“License”** means the License required of mining Operators in this ordinance to undertake Nonmetallic Mining in the Town of Ellsworth.

- (31) **“Overburden”** means the rock, soil, and ecosystem material that lies above an area of economic interest in Nonmetallic Mining.
- (32) **“Parcel”** or **“Lot”** means a unit or Parcel of land legally described and of record with the County Register of Deeds.
- (33) **“Person”** means any Person, partnership, corporation or other form of association.
- (34) **“Plan Commission”** means the Town of Ellsworth planning agency as authorized and created pursuant to Sections 60.62(4) and 62.23 WI Stats.
- (35) **“Public Highway”** means any segment, right of way or easement associated with a Town, County, State or Federal Highway designated for public use.
- (36) **“Reclamation”** means that which is set forth in NR 135, which is in addition to standards and requirements set forth in this ordinance.
- (37) **“Sensitive Areas”** means specially protected areas of land which are delineated by State or Federal mandates.
- (38) **“State”** means the State of Wisconsin, and includes the laws, administrative rules, codes, statutes, officers, employees, and agents where appropriate.
- (39) **“Surface Waters”** means all natural and artificial named and unnamed lakes, ponds, marshes, wetlands, bays and all rivers, streams, creeks, gullies, gulches, and springs within the boundaries of the Town that normally, seasonally, or during heavy precipitation contain water or storm water.
- (40) **“Timber”** means wood in any of its stages from felling through readiness for use as structural material for construction, or wood pulp for paper production.
- (41) **“Topsoil”** means the uppermost layer of soil, usually the top two to fifteen (2 to 15) inches, which has the highest concentration of organic matter and microorganisms where most of the Earth's biological soil activity occurs.
- (42) **“Town”** means the Town of Ellsworth and is used to refer to both the Town Planning Commission, and the Town Board, except when those official bodies are specifically referred to by name.
- (43) **“Waste Material”** means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a Manufacturing Process that is scheduled for disposal at the extraction Site or some other Site as part of an approved Reclamation Plan.
- (44) **“Water Table”** means the level at which the subsurface materials are saturated with Groundwater in a given vicinity. This includes water lenses and perched water tables which are aquifers that occur above the regional water table as defined by the DNR.

- (45) **“Well”** means an excavation or structure created in the ground by digging, driving, boring or drilling to access Groundwater for purposes of extracting water for use or removing it to lower the Water Table.

Section 6. License Required

A Person must obtain an Operator’s License from the Town prior to commencing Nonmetallic Mining as it is defined in Section 5. No Person shall operate a Nonmetallic Mining Site or Manufacturing Process or Manufacturing Facility without first obtaining an Operator’s License.

Section 7. Procedures For Applying For A License To Mine

- (1) **Application Form.** The Application Form for a License to mine in the Town of Ellsworth, as well as a copy of this ordinance and other relevant documents, shall be available from the Town Clerk. The Applicant should consult with the Town’s Engineer or Plan Commission, as appropriate, regarding the application process, required documentation, or other matters regarding this ordinance about which the Applicant may have questions.
- (2) **Application Submittal.** The Applicant shall submit the original signed Application Form along with nine (9) hard copies of the Application Form and nine (9) hard copies of all required supporting evidence and documentation required under Sections 8 and 9 of this ordinance to the Town Clerk accompanied by the payment of both the Application Fee and the base Administration Fee for the administration of this ordinance. The fees shall be made payable to “Town of Ellsworth.” The Application Form shall be signed by the Operator and by the Landowner, provided the Landowner is a Person other than the Operator.
- (3) **Distribution of Application.** Upon receipt of all of the items in sub (2), the Town Clerk shall provide the Engineer, each Plan Commission member, and each Town Board member with a copy of the Application Form together with all the documentation required in Sections 8 and 9 of this ordinance and shall place the application on the agenda for the Plan Commission within forty-five (45) days. The Town Clerk shall mail a copy of the Application Form to all Adjoining Landowners of the proposed Mine Site and also shall place a copy on the Town of Ellsworth website. The Town Clerk shall retain the original signed application and one (1) copy for the public record. Copies of documents submitted by the Applicant shall be made available to the public for the copying fee pursuant to the fee schedule adopted by the Town of Ellsworth and amended from time to time.
- (4) **Review by the Plan Commission.**
 - (A) **Preliminary Review.** The Engineer and Plan Commission shall review the application to determine if additional information or documentation is necessary to properly evaluate the application in light of Town’s purpose and intent as stated in Section 3 of this ordinance. If no additional information or documentation is deemed necessary by the Engineer and Plan Commission, the Plan Commission shall proceed to schedule a final review at its next regularly scheduled meeting.

I. **Circumstances Requiring Additional Information or Documentation.** The Plan Commission and/or Town's Engineer shall require the submittal of additional information in addition to that required in Section 8 of this ordinance for any of the following circumstances:

- (a) The Site will include a Manufacturing Facility that draws from wells twenty five thousand (25,000) gallons of water per day in the production of a merchantable product or products including, but not limited to, washing materials, and the control of Dust originating from on-Site traffic or from stockpiled materials.
- (b) The Nonmetallic Mining will extract material below twenty (20) feet above the Water Table or below Bedrock or result in pumping more than twenty five thousand (25,000) gallons on any given day for dewatering purposes.
- (c) The Nonmetallic Mining will involve Blasting.
- (d) The Nonmetallic Mining will involve burning or combustion to heat the Nonmetallic Minerals.
- (e) The Manufacturing Process shall produce Waste Material that shall be deposited into the Mine Site as part of the Reclamation process.
- (f) The Nonmetallic Mining operation anticipates the use of more than thirty (30) loaded trucks per day in removing materials from the Site during normal operation.

(B) **Review of Additional Information or Documentation.**

- I. The Plan Commission and Engineer shall specify any additional information and documentation from Section 9 of this ordinance that it deems necessary to evaluate the License application and shall so inform the Applicant. The Plan Commission and the Applicant shall agree upon a date for the submission of the additional information and documentation.
- II. The Plan Commission and Engineer shall also determine the need and the cost of acquiring its own experts to evaluate the additional materials and the Applicant's proposed Nonmetallic Mining operation. The Plan Commission shall give written notice to the Applicant of any additional Application Fee to be charged beyond the base Application Fee the Applicant has already paid for the purpose of the additional review.
- III. Once the Applicant has submitted the required additional documentation and has paid the additional Application Fee in the amount charged, the Plan Commission and Engineer shall continue the review of the application. The Plan Commission

may receive additional comments from the Applicant or members of the public as part of its review.

(C) **Final Review.** The Plan Commission shall schedule the application for final review within sixty (60) days following its completion of review under paragraphs 4(A) or 4(B) of this section. The Plan Commission shall provide an opportunity for the public to be heard prior to its final review.

(D) **Recommendation to the Town Board.** Upon completion of its review, the Plan Commission shall make findings of fact and either recommend that the Town Board grant the Applicant a License to mine with or without restrictive conditions of use, financial assurance, and any needed agreement referenced in Section 18 of this ordinance, or recommend that the Town Board deny the application for a License to mine. The Plan Commission will make every reasonable effort to expedite its review of the application.

(5) **Review by the Town Board.**

(A) **Notice and Hearing.** The Town Clerk shall place the Plan Commission's recommendation on the agenda for its next meeting of the Town Board. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all Landowners within one (1) mile of the proposed mine and all residents living along any transportation routes being proposed to be used. At the public hearing, the Town Board shall take public comment on the proposed Nonmetallic Mining.

(B) **Town Board Decision.** Following the public hearing, the Town Board may take immediate action on the application or set a later date for a meeting at which time the Town Board shall make a final decision on the Operator's License. The Town Board shall review the Plan Commission's recommendation, the Engineer's findings and advisement, and other findings of fact as well as consider public comments made at the public hearing. The Town Board shall grant the License, either with or without restrictive conditions, only if it determines that the Nonmetallic Mining will be consistent with the purposes of this ordinance as set forth in Section 3 above and with other provisions of this ordinance including but not limited to conditions in Section 10 of this ordinance.

(6) **License Amendment.** If the Town has issued an Operator's License, the Operator may request an amendment to that License during the License term using the same process as the original License application.

Section 8. Application Forms and Attachments

All Applicants for a License for Nonmetallic Mining or Manufacturing Facility in the Town of Ellsworth shall submit the following information:

(1) **Operator/Applicant Information.**

- (A) The name, address, phone number(s), and e-mail address of the Operator of the Nonmetallic Mining operation.
- (B) The name, address, phone number(s), and e-mail address of all Landowners or lessors of the Parcel(s) on which the Nonmetallic Mining operation will occur.
- (C) A copy of a fully executed lease and/or agreement between the Landowner and the Operator who will engage in Nonmetallic Mining on the proposed Site.

(2) **Site Information, Plans and Maps.**

- (A) Certified survey map(s) and Parcel identification number(s) of the Parcel(s) on which the Nonmetallic Mining operation will be located.
- (B) Current aerial photo of the proposed Site at a scale of one (1) inch equals six hundred (600) feet signed by both the Operator and the Landowner.
- (C) A map drawn to a scale of one (1) inch equals two hundred (200) feet showing the boundaries of the Nonmetallic Mining Site, the location and total acreage of the Site, and the name of all roads within one (1) mile of the Site.
- (D) A topographic map of the Mine Site extending one-thousand-three-hundred-twenty (1,320) feet beyond the Site boundaries at contour intervals no greater than ten (10) feet.
- (E) A separate drawing showing proposed location within the Site of all buildings and all other structures, Erosion control measures, monitoring Wells, equipment, tanks, stockpiles, settling ponds, wash areas, identified storage and parking areas. If Applicant is applying for a License for an existing Mine Site, show the boundaries of the existing excavation, stockpiles, and wash or settling ponds.
- (F) A map on which the residential, agricultural and municipal Wells within one (1) mile of the boundaries of the Nonmetallic Mining Site in all directions are marked and given a numerical identification of the location.
- (G) The location and name of all Surface Waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the Site and within one (1) mile of the Site.
- (H) The horizontal and vertical measurements on all maps shall be referenced to a permanent reference point of the Pierce County coordinate system.
- (I) A description and map of the distribution, depth and type of Topsoil on the Site, as well as the geological composition and depth and width of the Nonmetallic Mineral deposit.

- (J) A map identifying the location of all other non-contiguous Sites, if any, that will contribute Nonmetallic Mineral to the same Manufacturing Facility as the Site for which the Applicant seeks a License.
- (K) A map identifying the location of the Nonmetallic Mineral deposit on the Mine Site within the Town of Ellsworth.
- (L) The dimensions of the proposed excavation and the elevation of observed or estimated Water Table(s) as determined by test borings within the Site and within one-thousand-three-hundred-twenty (1,320) feet on all sides adjacent to the Site. The Applicant shall hire the services of a licensed hydrologist or geologist to acquire this information.
- (M) An outdoor lighting plan shall be submitted that shows the location, mounting height, types of luminaries, accessory equipment such as shades and deflectors, and the beam direction. The manufacturer's photometric data shall also be provided. All light sources shall be shielded so that they are not directly visible from adjacent residences. Spillover of lighting into adjacent residential properties shall not exceed two (2.0) foot-candle measured at any point ten (10) feet beyond the Mine Site.
- (N) A list of the mailing addresses of Adjoining and Adjacent Landowners as of the date of application for License of Nonmetallic Mining or Manufacturing Process.

(3) **An operational plan for the Site to include the following:**

- (A) The name of the Operator and location of the Site.
- (B) Dates of the commencement and cessation of the Nonmetallic Mining.
- (C) A schedule of the activities that will be necessary to prepare the Site for initial use including, but not limited to, drilling and initial testing of monitoring Wells, erection of air quality monitoring stations, placement of Erosion control, construction of Berms, roads, holding and wash ponds, and the building of all structures.
- (D) Description of Nonmetallic Mining methods to be used for extraction and any Manufacturing Process and the sequence of operations.
- (E) Description of types of machinery and equipment to be used.
- (F) Estimated volume of all material to be extracted on an annual basis.
- (G) Estimated volume of Nonmetallic Minerals to be extracted on an annual basis.
- (H) Estimated total volume of all material to be extracted through the life of the Site.
- (I) Estimated total volume of Nonmetallic Minerals to be extracted through the life of the Site.

- (J) Location of Public Highway access points together with copies of access permit(s) that have been granted.
- (K) Identification of all proposed off-Site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted Nonmetallic Minerals or products to or from the Site.
- (L) A plan for training all Nonmetallic Mining employees as to the requirements of this ordinance.
- (M) A water budget, including the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of runoff.
- (N) Measures to be taken to screen the Nonmetallic Mining from public view.
- (O) Measures to be taken to minimize noise, Fugitive Dust, vibrations, and Light Pollution.
- (P) Security measures to be employed on Site.
- (Q) A listing of any chemical materials, including fuel supplies, that will be used in the Nonmetallic Mining or Manufacturing Process, store location on Site, and a description of measures to be used for securing and storing these materials.
- (R) A plan for responding to spills of any hazardous materials on the Site.
- (S) A preservation plan for avoiding disturbance of historic, cultural or archaeological sites, natural and man-made landmarks, and unmarked human burials. A preservation plan shall be required for each proposed Nonmetallic Mining operation. The plan shall consist of the following:
 - I. A detailed description of historic, cultural or archaeological sites that are on the property;
 - II. A description of how the proposed Nonmetallic Mining will disturb or adversely impact identified historic, cultural or archaeological sites and artifacts located on the Site;
 - III. A description of how adverse impacts will be mitigated, including methods of restoration, preservation, and salvage; and,
 - IV. The identity and qualifications of all individuals who are involved in the preparation and implementation of the plan.
- (T) A plan for controlling any flooding at the Site.
- (U) A plan for controlling weeds and maintaining buildings and equipment in neat condition

at the Site.

(V) A plan to harvest and to convert to a Forest Product any Forest areas and to dispose of stumpage and Forest waste without burning.

(4) **Infrastructure Development and/or Maintenance Agreement.** An Infrastructure Development and/or Maintenance Agreement, per Section 18 of this ordinance, between the Town and Operator shall be required for all required upgrades to public infrastructure, including signage, required due to Nonmetallic Mining and/or Manufacturing Processing, and for all expected maintenance or repairs to infrastructure in the Town for abnormal damage and wear caused by Nonmetallic Mining and/or Manufacturing Processing and Reclamation as determined by the Engineer.

(5) **Information Demonstrating Compliance with Minimum Standards.**

(A) The Operator shall provide the information necessary to demonstrate that the Nonmetallic Mining and/or Manufacturing Process will comply with the minimum standards in Section 10.

(B) The Operator shall provide information establishing baseline conditions at the Site before Nonmetallic Mining begins including:

I. The Water Table elevation across the Site and a test of Groundwater for any poison or toxin that may be present.

II. The base flow of Surface Waters within one-half (1/2) mile of the Site.

III. The midday ambient level of airborne fine particulate matter (PM) expressed in micrograms/cubic meter, measured to the commonly known PM10 and PM 2.5 standards at the boundaries of the Mine Site at each cardinal compass heading. The sample measurements shall be taken on five (5) different non-sequential days. The date and time of day, average wind speed and direction and relative humidity during the sample period shall be noted in the test report.

IV. The midday and midnight A-Weighted Background Sound Level expressed in decibels (dba) at the boundaries of the Mine Site at each cardinal compass heading.

V. The midnight ambient moonless night light levels expressed in foot candles at the boundaries of the mine at each cardinal compass heading.

Section 9. Additional Information and Documentation

Additional information and documentation is as set forth herein in Section 7(4)(B)(I), including but not limited to the following:

- (1) **Impacts on Groundwater Quantity.** If the proposed Nonmetallic Mining will extract material below twenty (20) feet above the Water Table, or below Bedrock, or will result in pumping more than twenty five thousand (25,000) gallons per day from the Mine Site for dewatering or Manufacturing Process, or has the potential for adverse impacts on existing Groundwater users in the Town, then the following information in addition to that required in Section 8 of this ordinance shall be required.
- (A) Additional hydro geological information including, but not limited to, the following:
- I. A list of all numerically identified Wells within one (1) mile of the Site and, based on Well construction reports, information for each Well regarding Well depth, depth of casing, and depth to the source of Groundwater being drawn from.
 - II. Written identification of all known contaminated Groundwater resources within one (1) mile of the Site.
 - III. Written identification of the elevation of the Water Tables, and the directions and rate of Groundwater flow within one (1) mile on all sides of the Site.
 - IV. Written identification of the elevation for all Surface Waters, streams and tributaries, including headwaters within one (1) mile of the Site. Elevations shall include the current water level, as well as the ordinary high water marks and baseline flows. If the DNR has not established a base flow for streams tributaries and headwaters within one (1) mile of the Site, the Applicant may be required to retain a licensed hydro-geologist to establish a base flow using standard scientific methods.
 - V. A delineation, using a licensed wetland scientist and DNR data, of the location of any wetlands on the Nonmetallic Mining Site based on an on-Site investigation, and within one (1) mile of the Site, using available maps, photos and other resources.
 - VI. When appropriate for the information being provided by a map, maps should be in the form of contour maps and multiple geological cross-sections passing through the proposed Site and all other areas of concern. Horizontal and vertical measurements shall be referenced to a permanent reference point of the Pierce County coordinate system.
- (B) Additional information on water usage and water management methods to be used on the Site including but not limited to:
- I. A map or engineering drawing of the Nonmetallic Mining Site, including contiguous acreage slated for possible expansion. Provide the location of existing and proposed Wells, including Well depth, depth of casing, depth to water, and pumping capacity for each Well.

- II. An identification of the location of all wash ponds, settling ponds, absorption beds and the like, and their distance from Bedrock and the Water Table; a description of how these will be maintained for their optimal functioning; and a description of how overflows from them will be managed on Site.
- III. A description of the various uses to which water will be put on the Site, including dewatering, which shall include for each such use, the frequency and rate of withdrawal, and the maximum average daily amount of withdrawal in a one (1) week period during Nonmetallic Mining.

(C) Additional information regarding the operations at the Site including, but not limited to, the following:

- I. Where dewatering is proposed, an identification of the pumping rates and times, elevation of Groundwater drawdown level, and the location and amounts of discharge.
- II. Indicated elevation at the lowest point below Groundwater at which excavation and dewatering activity will occur.
- III. A description and drawings of methods to be used for prevention of Surface Water running into the excavation.
- IV. A Groundwater monitoring program to include the installation of monitoring wells near the excavation Site boundaries to measure Groundwater elevations, quality, and flow rate and direction.
- V. All necessary means to ensure the reliability of the modeling shall be used, including justification of input data, calibration and sensitivity analysis of Groundwater models, etc.
- VI. A reliable estimate, to the extent possible, of the depth and width of the cone of depression together with Groundwater flow rates and direction, during Nonmetallic Mining operations.
- VII. An identification as to the possible existence of fractures, crevices and cavities in the deposit.

(2) **Impacts on Groundwater Quality.** If the proposed Nonmetallic Mining will extract material below twenty (20) feet above the Water Table, or below Bedrock, or if Manufacturing Process of the product(s) will create Waste Material stockpiled or disposed of on this Site as part of the Reclamation of the Site or otherwise has the potential for adverse impacts on Groundwater quality, then the following information in addition to that required in Section 8 of this ordinance may be required:

(A) Information regarding core samples which may include, but is not limited to, the

following:

- I. Core samples to the depth of the proposed excavation taken from every one-half (½) -acre sector of the proposed Site if the Site is two (2) or more acres. Any core samples shall be taken by a registered professional geologist or civil engineer. The core sample shall be taken and recorded at 10-foot-depth intervals.
- II. Analysis of such samples for lead, arsenic and any other toxic metal or mineral that may reasonably be believed to be present in the area or generally in the type of soils and deposit from which the extraction will be made. Tests shall be conducted by a certified lab which is approved by the Town's Engineer.

(B) Baseline Groundwater quality.

- I. Information regarding baseline Groundwater quality at the Mine Site prior to the commencement of Nonmetallic Mining in accordance with Wis. Admin. Code §NR 140.20. In such a case, Wells shall be located every two (2) -acre sector of the proposed Site if the Site is four (4) or more acres, or from each acre of the Site if it is less than four (4) acres.
- II. Information regarding baseline Groundwater quality in any private water supply within one (1) mile of the property boundaries of the mining Site, provided access to testing such Wells is provided by the Landowner.

(3) **Off-Site Impacts.** If the proposed Nonmetallic Mining will include a Manufacturing Facility that draws from wells twenty five thousand (25,000) gallons or more of water per day in the production of a merchantable product, or more than thirty (30) trucks per day, or otherwise has the potential for adverse off-Site impacts on the Town, then the following information in addition to that required in Section 8 of this ordinance shall be required.

(A) **Information Regarding Traffic Impacts.** Information regarding traffic impacts shall include the following:

- I. An estimate of the number of trucks per day entering and leaving the Site and the weight limits applicable to such trucks;
- II. A map showing the location of any off-Site Manufacturing Facility, rail loading or other transfer Sites and the routes taken to transport material to them, the location of all residences, schools, or places of commerce that access the route and their distance from the roadway, and the location of livestock and farm equipment accesses and crossings in the Town of Ellsworth; and
- III. A description of issues associated with the selected routes which may affect scheduling of traffic on these routes such as school bus use and marked or unmarked line of sight issues.

- (B) **Information Regarding Control of Surface Water Impacts.** Information demonstrating compliance with the provisions of Wis. Admin. Code §NR 216 for Site Erosion control and storm water management and any other applicable State or Federal regulations regarding runoff and storm water management.
 - (C) **Information Regarding the Control of Dust and Other Fugitive Air Emissions.** Information demonstrating compliance with the provisions in Wis. Admin. Code §NR 415.075 including, but not limited to, a Fugitive Dust control plan and an ambient air monitoring plan.
 - (D) **Information regarding Sensitive Areas and resources.** Identification, after consultation with the Wisconsin Department of Natural Resources and the United States Fish and Wildlife Service, any threatened or endangered species or species of concern on the Natural Heritage Inventory within the Mine Site, and any trout habitat within one (1) mile of the Mine Site.
- (4) **Blasting.** If the proposed mining operation involves Blasting, then the following information in addition to that required in Section 8 of this ordinance may be required.
- (A) Demonstration that the Applicant has applied for and obtained a Blasting permit from the Town of Ellsworth.
 - (B) Demonstration that the Operator is in compliance with all procedures and standards for Blasting set forth in Wis. Admin. Code DSPS (Dept. of Safety & Professional Services), ch. 307.
 - (C) Demonstration that all Blasting materials kept on the Site shall be stored in accordance with standards set forth in Wis. Admin. Code DSPS., chs. 307 and 314, and the NFPA (National Fire Protection Assoc.) 495, Explosive Materials Code.
 - (D) Demonstration of compliance with the Town of Ellsworth Ordinance 2013-2, “Blasting Ordinance”.
 - (E) In the event of a conflict among the requirements set forth above, the strictest requirements shall control.
 - (F) Data compiled by the Engineer at the Operator’s expense of the structural condition of all existing structures within one-half (½) mile of the Site. This data shall be provided by registered mail to Adjacent or Adjoining Landowner of the respective property and, within five (5) working days, the Adjacent or Adjoining Landowner may notify the Town of their intention to hire their own engineer to provide additional data that will become part of the application data. The Adjacent or Adjoining Landowner shall be given fifteen (15) working days to obtain this data. This time shall cause an extension of the License application process.

Section 10. Minimum Standards of Operation

(1) General Standards.

- (A) The Operator and Landowner shall allow the Engineer, any member of the Town Board, the Chair of the Plan Commission or any agent or employee of the Town, to inspect the Nonmetallic Mining Site and operational records upon reasonable notice.
- (B) The Operator shall fence the borders of the entire Site with chain link fencing with a minimum height of eight (8) feet.
- (C) The Operator shall obtain a Blasting permit from the Town for any Blasting operations.
- (D) The Operator shall demonstrate that all other applicable Federal, State, County and Town permits and/or approvals for Nonmetallic Mining have been obtained prior to commencement of the Nonmetallic Mining.
- (E) The Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any governmental body against the operator in relation to Nonmetallic Mining within the Town.
- (F) The Operator shall store, use and dispose of all hazardous chemicals and fuels in accordance with applicable State and Federal law.
- (G) The Operator shall provide dust collection or air filtration equipment that is equipped with discharge stack monitoring apparatus capable of detecting and recording rupture of any filter bags or media. Upon probable rupture or excessive particulate discharge, the system shall alarm and, if not remedied in twenty-four (24) hours, shut down the air stream. The operating record of each stack monitoring apparatus, in electronic/digital format of each apparatus, shall be available to the Engineer. Records shall be kept for the duration of the Nonmetallic Mining by the Operator.
- (H) The Operator shall keep the Mine Site in a neat and orderly condition. Equipment and buildings at the Site shall be maintained in good appearance and working order.
- (I) The Operator shall not dispose of Waste Materials containing chemicals declared to be hazardous by a government agency at the Site or Manufacturing Facility.
- (J) The Operator shall provide water meters showing total gallons used. Site Wells used for monitoring and testing need not be metered.
- (K) The Operator shall not bring any foreign material or material from other Nonmetallic Mining operations to the Site to use as fill or during Reclamation without prior approval of the engineer.
- (L) The Operator shall not dispose of any chemicals declared to be hazardous by a

government agency at the Site or Manufacturing Facility.

- (M) The Operator shall have a written plan for responding to spills of any hazardous materials on the Site or while in transport either to or from the Site.
- (N) The Operator shall have written records of training all employees, suppliers, and subcontractors to the General Standards of operation. The written record shall consist of copies of this section of the ordinance signed and dated by each employee, suppliers, and subcontractor.

(2) **Standards Regarding Off-Site Impacts for Open Pit Mines.**

- (A) The Operator shall undertake all best practice measures necessary for the control of Surface Water runoff from Nonmetallic Mining in order to prevent pollution and Erosion of sediment onto neighboring properties, Surface Waters, and Groundwater, and shall comply with the standards for Erosion control under NR 216 and NR 151 as applicable.
- (B) The Operator shall undertake all best practice measures to control storm water runoff from surrounding areas from entering the Nonmetallic Mining Site or Manufacturing Facility and shall comply with the standards for Erosion control under NR 216 and NR 151 as applicable.
- (C) A Buffer Area of a minimum of fifty (50) feet shall be established along bordering property lines and Public Highways. Buffer Areas shall not include wetlands or road rights-of-way.
- (D) A Berm of a height sufficient to screen the mining operation from public view at ground level shall be created by using the Topsoil from the Site during the preparation the Site. If an insufficient amount of Topsoil is available, then insofar as it is practical, other means of screening shall be used and put in place prior to the onset of the extraction and other Nonmetallic Mining operations. The Berms shall not be in the Buffer Area.
- (E) Hours of operations shall be limited to ten (10) hours a day, five (5) days per week, Monday through Friday, unless otherwise noted on the License. Nonmetallic Mining operations shall be prohibited during night-time hours, unless the Operator petitions the Town to allow night-time operations for an emergency need, but that shall be allowed only for a period not to exceed thirty (30) days.
- (F) Limitations as recommended by the Engineer and Plan Commission shall be placed on the number and scheduling of trucks entering or leaving the Site or Manufacturing Facility, or traveling along specific transport routes, if the Town determines that such limitations would be a necessary and effective way to protect the safety of children being taken to or returned from school, or to protect the safety of residents or to protect the safety of commuters at times when traffic volume from commuters going to and from work is highest. The Town may also impose truck weight limits necessary to

maintain Town roads and springtime road use restrictions as is common for other roads.

- (G) The use of compression release engine brakes (Jake brakes) by the trucks used in the nonmetallic mining operation is allowed but not in the vicinity of residential buildings if at all possible, but in any case the use of Jake brakes shall not result in violating Federal Motor Carrier Administration Rule #325.7.
- (H) The Operator shall use best management practices to keep noise from Nonmetallic Mining and Manufacturing Process at or below sixty (60) decibels (dba) at the Site boundaries. Exceptions to this are scheduled Blasting activities.
- (I) All exterior lighting shall be fitted with opaque shields to prevent direct visibility of the lamp to persons on public waters or adjacent lands more than fifty (50) feet beyond the Site. Night lighting on Site shall be limited to that which is minimally necessary for security and shall be shielded from illuminating off-Site areas and reflective lighting of the night sky. Effort shall be made to minimize illumination of the night sky. The Applicant shall provide outdoor lighting as necessary to enhance the safety of the Site. Lighting shall be designed in a manner that not only enhances Site security and public safety, but in a manner that conserves energy and prevents spillover, nuisance or hazard effects of light and glare on adjacent locations and uses of land.
- (J) The Town shall require the use of all relevant Dust control measures specified in NR 415.075, without regard to the mine size limitations in 415.075(1)(b)3., and additional methods that achieve the same or better dust abatement control at points of manufacturing /processing, reloading, loading and transporting and would incur the same record-keeping and reporting as that done at the Mine Site.

(3) Standards Regarding Off-Site Impacts for Underground Mines.

(A) The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under NR 216 and NR 151 as applicable, and in its storm water pollution prevention plan.

(B) In the event that the mine site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial or residential purposes, the operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.

(C) The operator shall provide a buffer area of a minimum of 100 feet (**or the County Zoning setback distance**) along bordering property lines and as measured from the center of public roadways. Buffer zones may be required to be greater than 100 feet where slopes are involved. Buffer areas shall not include wetlands. In no case will extraction activities be permitted within 200 yards of any existing residence, however. The operators and owners of any non-metallic mining operation shall not be held liable for any new residences constructed after the start of

the extraction activity under a permit granted by the Land Management committee, even if those new residences shall be closer than the setbacks specified herein.

(D) The operator shall screen the mining operations from public view to the maximum extent practicable through the use of berms, additional setbacks or other measures.

(E) Hours of operation will be determined based on individual site criteria to minimize off-site impacts to residents.

(F) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken or returned from school, or the safety of residents, tourists, and commuters at times when traffic volume from commuters going to and from work is highest or when tourist traffic is highest. The use of compression release engine brakes (Jake brakes) by the trucks used in the nonmetallic mining operation is allowed but not in the vicinity of residential buildings if at all possible, but in any case the use of Jake brakes shall not result in violating Federal Motor Carrier Administration Rule #325.7

(G) The operator shall limit night lighting on site, to that which is minimally necessary for security, or safety, and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky. At a minimum such measures shall include the following:

(i) The use of full cutoff shrouds on all lights.

(ii) Portable lighting shall be used only as necessary to illuminate temporary work areas.

(iii) The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.

(iv) The design and location of access roads to minimize lights from traffic and operations to neighboring properties.

(H) The Operator shall utilize all applicable particulate matter emission control measures specified in Wis. Admin. Code & NR 415 without regard to mine size limitations in 415.075(1)(b)3, including ambient air monitoring, the preparation and implementation of a fugitive dust control plan and required recordkeeping, all of which shall be made available to the Town. The Operator shall notify the Town and provide it with a copy of any application for an exemption or a variance from the air monitoring requirements of NR 415 related to the Operator's nonmetallic mining site and shall facilitate the Town's participation in the exemption or variance application and review procedure. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075, or as required by the Town Chairman to alleviate residents' complaints.

(I) The Operator shall use best management practices to keep the noise generated by all nonmetallic mining operations at or below sixty (60) decibels at the site perimeter, to the maximum extent practicable. The operator shall control off-site noise levels to the maximum extent practicable.

(J) Operators shall monitor the ambient level of airborne particulate matter of 4 microns or less in size (PM4) at multiple offsite locations, measured by the method described in Appendix L, of 40 CFR part 50 (most current version) or by a method tailored to measure PM4 as approved by the Town in consultation with the Town's retained experts. The Operator shall evaluate what fraction of the sampled particles collected is respirable silica. The type and number of monitors, location, frequency and duration of the monitoring program shall be determined by the Town after consultation with its retained experts and the Operator. The monitoring shall be designed to allow data collection such that the emissions from the non-metallic mining operation can be identified from the sampling, and differentiated from the normal background levels of these size particles.

Air monitor results inclusive of any applicable regional background concentration shall not exceed more than the National Air Quality Standards limits as outlined in 40 CFR Part 50.7. If any of the results show concentrations over 65 micrograms per cubic meter in a twenty four hour period, or 12 micrograms per cubic meter long term arithmetic mean concentration over any given month (reference 40 CFR Part 50.7), or if the long term ambient respirable silica concentration in any of the samples exceeds 3 micrograms per cubic meter arithmetic mean concentration referenced over any given month, the operator shall provide a report to the Town Board describing any specific circumstances related to their operations that may have contributed to the reported results, and a plan to implement additional best management practices to minimize the respirable silica or ambient air quality.

All costs of air monitoring and corrective measures shall be borne by the Operator. The Operator shall compile summaries of air monitoring data results that shall be provided to the Town within ten days of when the test results become available to the Operator. A testing activities report shall be provided to the Town on at least a monthly basis for at least the first year, reporting intervals may be adjusted as appropriate by the Town Board thereafter.

(K) Before an Operator's license is issued there must be in place fully executed road agreements between the applicant and each Town and County with jurisdiction over all roads designated as preferred or alternate routes in the applicant's Operational Plan which are located between the nonmetallic mining site, any processing plant for the nonmetallic minerals removed from the mine site, and the state or federal highway or railroad spur or barge loading facility used to transport processed or unprocessed nonmetallic minerals out of the area.

(4) Standards Regarding Groundwater and Surface Water.

(A) Impacts to Groundwater Quality. Nonmetallic Mining or Manufacturing Facility shall not cause a decrease of Groundwater quality standards at any Well identified on the documentation supporting the Application Form. In the event that a "preventative action limit" or "enforcement standard" under Wis. Admin. Code §NR 140 is exceeded in a private water supply Well within one (1) mile of the Site, any affected Landowner owner may utilize the remedies under Section 11 of this ordinance.

- (B) Impacts to Groundwater Quantity. Nonmetallic Mining or Manufacturing Facility shall not cause a significant reduction in the quantity of Groundwater available for reasonable use by current users within one (1) mile of the Mine Site. A significant reduction is a drop in the Water Table that results in a substantial adverse impact on a private Well, including but not limited to, the inability of a Well to provide water on a continuous basis. In the event that a significant reduction in Groundwater occurs within one (1) mile of the Site, any affected property owner may utilize the remedies under Section 11 of this ordinance.
- (C) Impacts to Surface Water Base Flow. Nonmetallic Mining or Manufacturing Facilities shall not cause a lowering of the Groundwater Table that results in adverse effects on Surface Waters within (one) 1 mile of the Mine Site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of Nonmetallic Mining. If the stream flow of Surface Waters falls below base flows for more than five (5) days, then the Town shall notify the Operator and the Operator shall have fifteen (15) days from such notice to submit a report that demonstrates that the reduction in stream flow was not attributable to the mining operation or to present a plan to return flows to base flow levels. If such a report or plan is not presented to the Town or is deemed inadequate, Nonmetallic Mining or the Manufacturing Process shall cease until these flows have returned to base flow levels and are no longer in danger of being lowered below base flow standards by continued operation of the mine.
- (D) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the Groundwater Table that results in adverse effects on Surface Waters which serve as a critical source of water for agricultural or municipal functions such as fire protection within one (1) mile of the Mine Site. Adverse effects include, but are not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation. If the stream flow of Surface Waters falls below base flows for more than five (5) days within one (1) mile of the Site, the Town or any affected Landowner may utilize the remedies under Section 11 of this ordinance.
- (E) Nonmetallic Mining and Manufacturing Process shall have a minimum of one monitoring Well for every five (5) acres of Site and at least one on each side of the Site at the boundaries of the Mine Site at each cardinal compass heading. The Operator shall take monthly samples for any poisons or toxins including but not limited to lead, arsenic, acrylamides, and chemicals used in the Nonmetallic Mining or Manufacturing Process. Reports shall be sent to the Town and the Engineer.
- (F) Chemicals used to treat water that will ever be discharged from the Site, or ever allowed to be reabsorbed into the ground on the Site, shall be on approved list for potable water by the American Water Works Association (AWWA).
- (G) The Operator shall mail an offer in writing to all Adjacent and Adjoining Landowners with existing Wells an annual water quality test at Operator's expense. Said test to be for poisons and toxins listed in (E) of this section.

(4) **Impacts on Off-Site Air Quality.**

- (A) The Operator shall install automatic, continuous, data recording fine particulate sampling and measuring devices at the boundaries of the Mine Site at each cardinal compass heading and at the nearest most practicable location as the baseline sample measurements stipulated in Section 8(5)(B)(III). The sampling and measurement devices shall be capable of measuring to the commonly known PM 10 and PM 2.5 standards.
- (B) The Operator shall use best management practices to ensure that at no time shall airborne fine particulate matter of a size of ten (10) microns or less be measured at the Mine Site boundaries, i.e. the PM 10 standard shall be met.
- (C) During operating times the Operator shall issue a monthly report of the fine particulate matter measurements to the Town and Engineer. The monthly report shall contain, but is not limited to, a daily graph of each device with wind direction indicated.

Section 11. Damages to Private Water Supply

- (1) An Adjacent or Adjoining Landowner or town resident within one (1) mile of the Mine Site may seek remedies under Section 14 of this ordinance for any of the following damages to private water supply:
 - (A) A decrease in water quality in a private water supply Well on the Adjacent or Adjoining Landowner's property.
 - (B) A substantial adverse impact on the quantity of water from a private Well on the Adjacent or Adjoining Landowner's property occurs, including but not limited to the inability of any such Well to provide water on a continuous basis.
 - (C) A lowering of Surface Waters which serve as a source of water for personal, agricultural or municipal functions on the Adjacent or Adjoining Landowner's property to levels below base flow levels for more than five (5) days.
- (2) Any Adjacent or Adjoining Landowner or town resident under sub (1) seeking a remedy under this section shall simultaneously file a written notice with the Town and the Operator of the occurrence of the event under sub (1) explaining the nature and extent of the problem.
- (3) Within twenty-four (24) hours of receipt of such written notice under sub (2), the Town may use funds provided under Section 14 of this ordinance to provide an adequate interim water supply. The Town shall also use funds under Section 14 of this ordinance to indemnify the Town for any claims filed under Wis. Stat. §281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).
- (4) Within twenty (20) calendar days of receipt of written notice under sub (2), the mine Operator shall provide to the Landowner, Engineer and to the Town a report that demonstrates that the

impact to the Adjacent or Adjoining Landowner or town resident was not attributable to the mining operation or to present a plan for a permanent alternative water supply to be paid by the Operator.

- (5) The Town shall, in consultation with the Adjacent or Adjoining Landowner and Engineer, review the report or plan and approve or deny such plan.
- (6) An Adjacent or Adjoining Landowner or town resident beyond one (1) mile of the Mine Site may apply to the Town for use of funds under Section 14 to remedy damages to a private water supply identified in sub (1), provided that the Adjacent or Adjoining Landowner or town resident can demonstrate to the Town that the damage to the private water supply was caused by the Nonmetallic Mining or Manufacturing Process. If the Town and Engineer determines that the damage was caused by the mine, the Adjacent or Adjoining Landowner or town resident can utilize the remedies in subs (2) to (4).

Section 12. License Duration, Renewal and Transfer

(1) License Term.

- (A) A License shall be granted for a period of no more than four (4) years, but may be renewed as set forth herein. If an Operator is not the Landowner, the term of the Nonmetallic Mining License shall not exceed the term of the lease and/or agreement between the Operator and the lessor.
- (B) When the Site for which the License has been granted has been completely reclaimed, the License shall be terminated in the same year.
- (C) Should the License not be renewed after Town appeals have been exhausted, Reclamation of the Site shall begin immediately and proceed daily, weather permitting, until completed.

(2) License Renewal.

- (A) The Operator shall make written request to the Town Clerk for a renewal of the License to operate the mine no later than one-hundred-twenty (120) days prior to end of License Term together with the License fee.
- (B) The written request for renewal shall include an operational record for that portion of that year in accordance with the provisions of Section 17 of this ordinance. The Town Clerk shall place the request on the agenda of a regular or special meeting of the Plan Commission as soon as is reasonably possible but no later than within 60 days of the date on which the request is received. The Plan Commission shall consider the renewal request and shall make a recommendation to the Town Board after a consideration of the record of the operation of the mine, of any complaints by the public regarding the operation, and the Operator's compliance with the conditions of the permit. The Plan Commission may require the Operator to submit additional information prior to its

recommendation to the Town Board.

(C) The Town Board may grant the request for renewal for a period of up to four (4) years if it finds:

- I. The Operator is in compliance with the provisions of its License,
- II. There have been no material violations of the ordinance, which have not been appropriately remedied,
- III. There have been no violations of the provisions of the mining License remaining uncured, and
- IV. The Operator has not received multiple or recurring citations or orders for violations of the mining License or this ordinance. The Town may modify terms and conditions of the License as are reasonable and necessary for the protection of the public health, safety and welfare.

(D) If the Town Board denies the request for renewal, the Town Board shall notify the Operator in writing and provide the Operator with an opportunity for a hearing under the Administrative Appeals process.

(3) **License Transfer.** A License may be transferred to a new Operator if the new Operator provides financial assurances as required by the Town, County, or State, and all the terms of the original License remain the same and Sections 2(C)(I-IV) above shall apply.

(4) **Intermittent Term Licenses.** Intermittent mining may be permitted provided that intermittent cessation of the operation is addressed in the Nonmetallic Mining License, and the conditions of the License continue to be met during cessation of the Nonmetallic Mining. If the period of cessation is more than one-hundred-twenty (120) days, the Operator shall submit a plan for the stabilization and securement of the Site as a License amendment if it is not part of the approved plan of operation. If intermittent mining is not listed on the License yet the Operator has ceased operation for more than thirty (30) days, the Town shall require a stabilization and securement plan to be submitted by the Operator within fifteen (15) days. Said plan is to be implemented by the Operator within a timeframe established by the Town. If a stabilization and securement plan is not submitted and/or implemented by the Operator, the Town may use the Financial Assurance monies noted in Section 14 of this ordinance to stabilize and secure the Site.

Section 13. Financial Assurance

(1) In addition to requirements related to minimum standards of operation, financial assurance shall be provided to the Town as a condition of its issuance or renewal of an operator's license, in the amount determined by the Town's retained experts to be 150% of all amounts necessary for the following:

(A) Road repair/construction/reconstruction. An amount necessary as determined by the

Engineer for the repair, maintenance, or construction/reconstruction of Public Highways used for truck traffic transporting materials to or from the Site during the duration of the Nonmetallic Mining, Manufacturing Process, and Reclamation.

- (B) Water supply. An amount necessary as determined by the Engineer to provide an alternative water supply to potentially affected residences or agricultural operations within one (1) mile of the Site or such other area shown to be impacted by the Operator's operations.
- (2) Financial assurance to the Town shall be in the form of a cash deposit or an irrevocable letter of credit in favor of the Town, from an accredited financial institution located in western Wisconsin or eastern Minnesota, and in a form and for a term acceptable to the Town.
- (3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall have five (5) days to provide the increased amount or provide written objections to the Town. The Town shall place this matter for review during the next regularly scheduled Town Board meeting. The Town may retain, adjust, or amend its increased funds notice in that meeting.
- (4) The Operator shall also provide to the Town proof that it has provided the financial assurance for Reclamation required under Wisconsin law and any other applicable county ordinance.

Section 14. License Fees

- (1) **License Fees.** Payment of the Application Fee and the minimum Administration Fee in the amounts set forth by the Town of Ellsworth shall be made at the time the Operator submits a completed Application Form to the Town Clerk. An additional Application Fee shall be charged if, upon reviewing the application, the Plan Commission and Engineer determines the minimum Application Fee will not be sufficient to cover the cost of the Engineer and other consulting expertise necessary for an adequate review of the application. The Town Clerk shall give written notice to the Operator of the additional Application Fee charge. Review of the application shall not continue until the Operator has paid the additional Application Fee to the Town Clerk. If the License is not issued, the Application Fee is nonrefundable. If the License is not issued, the Town Board shall refund any of the Administration Fee in excess of costs associated with review of the application.
- (2) **Administration Fee Escrow Account.** The Town of Ellsworth shall establish an Administration Fee Escrow Account for each license application into which the Town Treasurer shall deposit the Administration Fees paid by the Operator at the time the Operator submits the completed Application Form to the Town Clerk, together with any additional Administration Fee charged when the Plan Commission determines its costs for the Engineer or other consultant expertise. This escrow account shall be used to pay the costs of the Engineer and any expert scientific, accounting, legal or engineering consultants needed by the Town to administer this ordinance during duration of any Nonmetallic Mining, Manufacturing Process, and Reclamation.

(3) **Annual Fees:**

- (A) The Operator shall pay an annual Administration Fee for each Site where Reclamation has not been completed.
- (B) The amount of the annual Administration Fee shall be based on the costs of administering the Operator's mining License during the previous calendar year and shall be determined by the Plan Commission and Town Board based on input from the Engineer. The annual Administration Fee shall be paid by the Operator exclusively to the Town of Ellsworth and submitted to the Town Clerk no later than the 15th of the month that the License expires.

Section 15. Enforcement, Procedures and Penalties

(1) **Violations.**

- (A) Engaging in Nonmetallic Mining without a License granted by the Town Board.
- (B) Failure to comply with the terms of this ordinance or the terms of the Agreement.
- (C) Making an incorrect or false statement in the information and documentation submitted during the Licensing process or renewal process or during inspection of Nonmetallic Mining by the Town or its duly appointed representative.
- (D) Failure to timely file the annual operational report under Section 17 of this ordinance.
- (E) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 14 of this ordinance or other order issued by the Town.
- (F) Failure to perform to submitted plans in Section 8(3) of this ordinance.
- (G) Failure to have all required County, State, and Federal licenses and permits.
- (H) Violation of any County, State, or Federal laws at the Site.

(2) **Remedies.** The Town Board may take any appropriate action or proceeding against any Person in violation of this ordinance, including the following:

- (A) Issue a stop work order.
- (B) Issue a notice of violation and/or issue an order that specifies the action to be taken to remedy a situation.
- (C) Issue a citation in accord with the Town of Ellsworth citation ordinance.

- (D) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (4) of this section and injunctive relief.
- (E) Suspend or revoke the Nonmetallic Mining License under sub (3) of this section.
- (3) **License Suspension or Revocation.** After giving notice and a hearing, the Town Board may suspend or revoke a License for a violation under sub (1) of this section.
- (4) **Penalties.**
 - (A) Any Person or entity that is adjudicated for a violation shall pay a forfeiture per Town of Ellsworth Citation Ordinance per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
 - (B) Any Person or entity adjudicated for violation of this ordinance shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.
- (5) A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 16. Annual Operation Reports

No later than December 1 of each calendar year, the Operator shall submit an annual report for all Sites for which the Operator has a License in the Town of Ellsworth. The operation report shall be submitted to the Engineer, Town Plan Commission Chair and Town Board and shall include the following information:

- (1) Name and mailing address of the Operator.
- (2) Location of the Site, including legal description and Parcel identification number.
- (3) A map or drawing accurately showing the area of excavation, the unclaimed area, and the reclaimed area. Give numerical description of the number of acres for each type.
- (4) A description of activities and operations on the Site for the previous calendar year.
- (5) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its License; a summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.
- (6) A description of deviations from the operational plan for the Site.
- (7) If mining into Groundwater, provide actual pumping rates and times, actual Groundwater discharge locations and quantities, and Groundwater monitoring results from all Site Wells and locations.

- (8) Upon the request of the town board, the operator will appear before the board to answer questions.

Section 17 Town Roads

(a) When Trucks used in the nonmetallic mining operation will haul nonmetallic minerals (excluding gravel) or nonmetallic mining waste material over Town roads as a designated haul route, the Operator shall first enter into a separate road use agreement pursuant to Wis. Stats. & 349.16., the purpose of which shall be to fund a complete traffic impact analysis of the Town road at issue and the highway upgrades, maintenance and repair of the road during the licensed term for the convenience and safety of the traveling public and to prevent financial burdens from being imposed on Town taxpayers due to road use in association with a nonmetallic mining operation. The road use agreement shall be in place before a license is issued or renewed under this Ordinance.

(b) Limitations as recommended by the Town Plan Commission or Town Board shall be placed on the number and scheduling of trucks entering or leaving the Mine Site or traveling along specific transportation routes if the Town determines that such limitations would be a necessary and effective way to protect the safety of children being taken from or to school or to protect the safety of commuters. The Town may also impose truck weight limits necessary to maintain Town roads and establish springtime road use restrictions as in common for other roads.

Section 18. Infrastructure Development and/or Maintenance Agreement

- (1) Should an Infrastructure Development and/or Maintenance Agreement, hereinafter "Agreement," between the Town and Operator addressing upgrades to public infrastructure and maintenance or repairs to Public Highways and other infrastructure in the Town for changes caused by Nonmetallic Mining and/or Manufacturing Processing and Reclamation be negotiated all legal, engineering, accounting, clerical and similar fees associated with producing the Agreement shall be paid by the Operator before a License is issued.
- (2) Process:
- (A) Provide Agreement in draft form with the application per Section 7 of this ordinance.
 - (B) If no Agreement in draft form is submitted with the application and the Engineer and/or Plan Commission and/or Town requires that one be included with the application, the Operator shall submit such an Agreement as approved by the Town's Attorney before any further action is taken on the License application.
 - (C) The Town and the Operator shall come to an Agreement before issuing a License.

- (4) Requirements. The Agreement shall be in writing and shall include:
- (A) The names of all parties to the Agreement.
 - (B) The effective date and term of the Agreement. The Town Board may require there to be an infrastructure Development and Maintenance Agreement in effect at all times during the expected life of the Nonmetallic Mining and Reclamation Period.
 - (C) The legal description and/or location of all land and/or infrastructure requiring work under the Agreement, and a detailed scope of all work to be completed under the Agreement.
 - (D) The financial assurance required by the Agreement.
 - (E) A schedule/timeline of all work being done under the Agreement.
 - (F) The manner of compliance with all provisions of the ordinance and Agreement.
 - (G) All additional Administration Fees associated with the Agreement.

Section 19. Mining Agreement.

Any of the provisions of this Ordinance, including the license term, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public at least equal to those of this Ordinance.

Section 20. Severability, Interpretation, and Abrogation

- (1) **Severability:**
- (A) Should any section, clause, provision or portion of this ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this ordinance shall remain in full force and effect.
 - (B) If any application of this ordinance to a particular Parcel of land is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, including all applicable appeals, such judgment shall not be applicable to any other Parcel of land not specifically included in said judgment.
- (2) The provisions of this ordinance shall be liberally construed in favor of the Town of Ellsworth and shall be held to be the minimum standards and requirements for the promotion of public health, safety, property values, natural resources, and general welfare and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the

Town of Ellsworth.

- (3) This ordinance is not intended to repeal, abrogate, or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this ordinance or those created after the effective date of this agreement provided the easement, covenant, deed restriction or agreement created after the date of this agreement is more restrictive than those in these regulations.
- (4) Where used the word “shall” is mandatory. Where used the word “may” is permissive.
- (5) **Non-Liability:**
 - (A) The Town does not guarantee, warrant, represent, or hold itself liable for any defects in plans or specifications, false information provided, plan omissions, examination or inspection oversight, construction, or damage that may result in the Nonmetallic Mining or Manufacturing Process and reserves the right to order changes or additions if conditions arise pertaining to public health, safety, or welfare.
 - (B) The Town assumes no responsibility for any property damage or any other form of injury which are the results of the Nonmetallic Mining or Manufacturing Process pursuant to authority granted under the terms and conditions of this ordinance.

Section 21. Effective Date

Following passage by the Town Board, this ordinance is effective the day after the date of publication or posting as provided by §60.80 Wis. Stats.

The Town Clerk shall properly post or publish this ordinance as required under §60.80 Wis. Stats.

Adopted this 1st day of April, 2013.

Barry J Foy, Chair

Everett S Muhlhausen, Supervisor

Jeffrey Redding, Supervisor

Attest:

Phyllis J Beastrom, Clerk

Posted the 5th day of April, 2013 at the Town Hall, T-Bar, Transfer Station and Town Website.

Attest: _____
Phyllis J Beastrom, Town Clerk