

**TOWN OF OAK GROVE  
PIERCE COUNTY, WISCONSIN  
ORDINANCE 2013 - 01  
NONMETALLIC MINE OPERATOR'S LICENSE**

**Section 1. Finding, Purpose and Authority**

- (1) Findings. Nonmetallic mining is a legitimate and permissible part of the state and local economy, yet the activities and processes employed can adversely affect the environment, Town residents, landowners and the public. Nonmetallic mining operations can have adverse effects on groundwater and surface water, including soil erosion when changed terrain is not managed in a way that mitigates soil damage from movement of surface water, and generate harmful levels of dust and noise. Nonmetallic mining operations can have negative impacts on the landscape and aesthetics when a mine site is not properly screened or reclaimed, and can present safety concerns to members of the public when not properly secured. Truck traffic generated by nonmetallic mining operations can damage public roads and lead to off-site adverse effects on the safety and well-being of Town children and adult residents and landowners. Property values may be adversely affected by non-metallic mining operations.

Although selected aspects of nonmetallic mining operations are subject to state or federal regulation, there is no comprehensive state or federal system of regulations concerning nonmetallic mining operations. Aspects of nonmetallic mining operations create a risk of significant adverse effects on the health, safety and welfare of the public, Town landowners and residents, especially Town landowners and residents in close proximity to nonmetallic mining operations.

- (2) Purpose. This ordinance is enacted to establish minimum local standards for all nonmetallic mining operations in the Town that are intended to protect public health, safety and welfare, preserve the scenic beauty, ecological balance and aesthetics of the Town's landscapes and environment, preserve and protect the quantity and quality of local ground and surface waters, avoid or minimize adverse effects on Town residents, taxpayers and the environment from the effects of nonmetallic mining operations, and to otherwise protect the safety and welfare of the people and communities in the Town of Oak Grove ("Town").
- (3) Authority. This ordinance is adopted pursuant to Town authority under Wis. Stats. §§ 60.10, 60.22, 61.34, 66.0415, and other authority available under state statutes. The amendment,

repeal or recreation of any statute affecting or related to this Ordinance and made after the effective date of this Ordinance is incorporated herein by reference as of the effective date of the statutory amendment, repeal or recreation.

## **Section 2. Applicability**

- (1) This ordinance shall apply to all nonmetallic mining operations in the Town except those described below, in sub. (2).
- (2) This ordinance does not apply to the following nonmetallic mining operations:
  - (a) Excavation or grading solely for domestic or farm use at a person's residence or farm.
  - (b) Excavation or grading for the construction, reconstruction, maintenance or repair of a public highway, railroad, or other transportation facility where the area in which excavation or grading conducted is located entirely within the boundaries of the highway right of way or is owned by the railroad or other transportation facility.
  - (c) Grading to prepare a reconstruction site or to restore land after a flood or natural disaster.
  - (d) Excavation for building construction purposes located and conducted entirely on the building site.
  - (e) Nonmetallic mining at any site where less than one acre will be affected during the life of the mine.
  - (f) Removal from the earth of products or commodities for non-mining purposes that contain minor or incidental amounts of nonmetallic minerals. Examples include production of commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.
  - (g) Nonmetallic sand and gravel mines in operation on and prior to the effective date of this ordinance shall not be required to register or to apply for a license under this ordinance. However, upon any substantial change in mining operations, including, but not limited to, the type of material mined, the intensity of mining operations evidence by hours of operations, tonnage removed, more frequent blasting, enlarging the size of the mine site, adding new manufacturing or processing operations, and/or any change that would require

a change in the reclamation plan, the mine will be considered a new operation and will be subject to the requirement of this ordinance.

- (h) An exemption from the requirements of this ordinance does not prevent the Town from requiring the operator of the exempt nonmetallic mining operation to enter into a highway use agreement under Wis. Stat. 349.16 or other authority available to the Town.

### **Section 3. Definitions.**

When used in this ordinance, the following terms and phrases have the following definitions:

- (1) “Nonmetallic minerals” means a product, commodity or material consisting principally of naturally occurring organic or inorganic non-metallic material including but not limited to mineral aggregates or nonmetallic minerals including stone, sand, silica sand, gravel, asbestos, beryl, diamond, clay, feldspar, peat, talc and topsoil.
- (2) “Nonmetallic mining” means all of the following:
  - (a) Operations or activities at a nonmetallic mining site for extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale. These practices may occur as above or below ground operations. This includes the use of mining equipment or techniques to remove nonmetallic minerals from the in-ground deposit, including drilling, blasting, excavation, grading and dredging.
  - (b) Manufacturing or processing operations carried out at the nonmetallic mine site or elsewhere that involves the use of machinery or equipment and where the operations include the washing, crushing, screening, or blending of mineral aggregates or nonmetallic minerals obtained by extraction from a mining site or brought to the operation from off-site.
  - (c) Manufacturing processes aimed at producing nonmetallic mineral products for sale or use by the operator including but not limited to blasting, grading, crushing, screening, scalping and dewatering.
  - (d) Stockpiling of nonmetallic mineral products for processing, transfer to alternate means of transportation, sale or use off-site; also stockpiling of nonmetallic mining waste material.

- (e) Transport of extracted nonmetallic minerals, finished products or waste material to or from a nonmetallic mining, manufacturing or processing site.
  - (f) Disposal of nonmetallic waste material.
  - (g) Reclamation of the extraction site.
- (3) “Nonmetallic Mine Tailings or Mine Tailings” means the non-marketable soil, rock, mineral, sand and other natural material that results directly from the operator’s licensed nonmetallic mining, and that is designated for disposal at the operator’s designated nonmetallic mining site, or elsewhere when part of the operator’s plan.
- (4) Nonmetallic mining site", "mine" or "mine site" means the land from which mineral aggregates or nonmetallic minerals for sale or use, and also includes the land on which is or will be located any related structures, equipment, storage facilities, stockpiles, [transportation loading](#), washing or screening facilities. A nonmetallic mining site includes all land contiguous to a nonmetallic mining site that is under common ownership or control of an owner or operator.
- (5) “Adjoining landowner” means a person or entity who is an owner of land located within one-half (1/2) mile of a nonmetallic mining site proposed and/or licensed under this ordinance and not a part of the area for which an operator's license is being sought, regardless of whether there is a residence or structure on the land and regardless of whether the land is contiguous to the nonmetallic mining site.
- (6) “Adjoining property or parcel” means a property within ½ mile of a nonmetallic mining site proposed and/or licensed under this ordinance and not part of the area for which an operator’s license is being sought, regardless of whether there is a residence or structure on the land and regardless of whether the land is contiguous to the nonmetallic mining site.
- (7) "Landowner" means one who holds title to land in fee simple or as purchaser on a land contract.
- (8) Operator” means all persons or entities who engage in nonmetallic mining in the Town under a Town license or an applicant for a Town license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.
- (9) “Operator’s license” or “license” means the license issued by the Town authorizing

nonmetallic mining operators to conduct nonmetallic mining activities in the Town and required to conduct such activities in the Town.

- (10) “Town” means the Town of Oak Grove and/or the Town Board of the Town of Oak Grove.

#### **Section 4. Operator's License**

- (1) License Requirement. Nonmetallic mining activities are allowed in the Town only as provided for in this ordinance. No person or entity shall start work on any mining structure or facility or operate a nonmetallic mine in the Town of Oak Grove without first applying for and obtaining an operator’s license from the Town.
- (2) License Term
- (a) An initial operator’s license extends from the date of issuance until the June 30 following the first twelve (12) months of nonmetallic mining. After the successful conclusion of the initial operator's license term, a renewal operator’s license may be granted for up to a three (3) year period. The Town Board may renew an operator’s license for less than three years if , in its discretion, the Town Board determines that a shorter term is necessary to protect the public health, safety, and welfare, due to site conditions, operations during the previous year require closer monitoring, or other similar circumstances require a shorter term.
- (b) An operator’s license is renewable under the procedure in Section 8, except that a temporary operator’s license may not be renewed.
- (c) Active nonmetallic mining as defined in this ordinance and authorized under the license must be commenced in the Town within twelve months of issuing the license or the license automatically expires. Date of issuance shall be the date stated on the license.
- (3) License Amendment. An operator seeking to expand or otherwise change its licensed operation during the license term shall apply to the Town for approval of an amendment to the operator's license during the license term, following the same process as for an initial license application.
- (4) License Transfer. An operator’s license affecting an operator in good standing is transferable during the license term only after the new operator demonstrates to the Town Board that it

meets all Town license requirements including that the new operator and the nonmetallic mine for which license is sought to be transferred will continue to meet all Town, County, State and Federal laws and regulations that apply to either; the proposed transferee operator is an individual or entity properly formed and authorized to do business in Wisconsin; a written assignment is presented to the Town that requires the proposed transferee operator to assume each and every obligation of the licensed operator; the proposed transferee operator provides financial assurances acceptable to the town for purposes of meeting all obligations required by the town, county, or state; has obtained the transfer of any Pierce County Reclamation Permit required to assume the operation, has posted the full financial security required by the County Permit, assumed each and every responsibility under any Town or County Road Agreement related to the nonmetallic mining operation, posted the full financial security required under any such Road Agreement, and the transfer is approved by the Town Board, following a public hearing preceded by not less than thirty (30) days notice of the proposed transfer to adjoining landowners from the proposed new operator.

- (5) License Revocation. Operator's licenses are revocable by the Town under the procedure in Section 9 of this Ordinance.
- (6)
- (7) Registration License. Nonmetallic mining operations that meet all of the following criteria may apply for a registration license under Section 7.(7 ) in lieu of an operator's license:
  - (a) Less than 5 acres of total affected acreage will be occupied by the nonmetallic mining operation during the life of the mine or the processing facility.
  - (b) The nonmetallic mining operation will not involve blasting.
  - (c) The nonmetallic mining operation will not involve processing of materials brought in from off-site or washing of materials mined on-site.
  - (d) The nonmetallic mining operation will not involve mining to a depth below the point one hundred (100) feet above the groundwater table.
  - (e) No flocculants, settling agents or chemical additives or treatments for nonmetallic minerals will be used or involved in on-site nonmetallic mining operations or stored on-site.

- (f) No existing woodlands or slopes greater than 3:1 will be occupied or adversely affected by the nonmetallic mining operation.

**Section 5. Procedures for Applying For a Nonmetallic Mining Operator's License**

- (1) Application. Applications for nonmetallic mining operator's licenses shall be filed in the office of the Town Clerk and submitted on the Town's Application Form, available from that office.
- (2) Application Submittal. An applicant shall provide the Town Clerk with an original plus ten (10) copies of the application, all required supplemental documentation, the application fee and the base administrative fee deposit in amounts shown on the Application Form. Applications shall be signed by all persons or entities seeking licensure as operator and by all owners of the nonmetallic mining site. The Town shall periodically review and revise the amounts required for the application fee and base administrative fee deposit with the objective that the application and administration process under this Ordinance will be fully funded by license applicants and operators.
- (3) Application Review.
  - (a) Preliminary Review. The Town Clerk shall preliminarily review the application for completeness and forward the application to the Town Board to determine whether additional information or expertise is necessary or will be of assistance to the Town Board when it reviews the application. If no additional information or expertise is deemed necessary, the application shall be scheduled for an initial informational public hearing.
  - (b) Additional Information. At any time during the application process that the Town determines that an application is incomplete or that additional information will be of assistance in determining whether the application and proposed nonmetallic mining operation will comply with the provisions of this ordinance, the applicant shall submit additional information before further proceedings take place. The Town may retain an engineer and other qualified person(s) with appropriate expertise ("retained experts") as the Town deems prudent to review the application, determine whether additional information is necessary or will be of assistance and to assist the Town in deciding whether the nonmetallic mining operation for which application is being made will meet the standards of this Ordinance.

- (c) Administrative Fee Deposit. Maintaining an adequate administrative fee deposit to pay the Town's cost of reviewing the application and administering this ordinance is a condition of Town processing of any application and maintaining a license. Amounts so deposited shall be held by the Town and used to pay for its application review, for ongoing administrative costs, retained experts and legal fees associated with the review and evaluation of the application at issue and the administration, enforcement, renewal or revocation of any license issued by the Town. Applicants and license holders shall replace depleted administrative fee deposits promptly upon being notified to do so by the Town.

The Town shall provide an applicant or license holder with an annual accounting for Town use of administrative fee deposits.

(4) Public Hearing and Decision.

- (a) Hearing Notice. After an application has been initially deemed complete and all retained expert reports have been delivered to the Town, the Town Clerk shall place the nonmetallic mining operator's license application on the agenda for public hearing and possible action at the next regular meeting of the Town Board . If a special Town Board meeting is convened for this purpose, the applicant shall pay the cost of such special meeting. The Town Clerk shall give public notice of the application and public hearing at least fifteen (15) days before the hearing. Hearing notices shall be separately mailed to each adjoining landowner by the Town Clerk.
- (b) Town Board Decision. Public comment on the application may be filed before and at the public hearing. The applicant may provide additional information. When additional information is provided, written public comment may be submitted for a reasonable time after the applicant provides the additional information. After the public hearing, the Town Board may take immediate action or set a later date for a meeting at which the Town Board shall make a final decision on the nonmetallic mining operator's license application. If a later special meeting is convened for such purpose, the applicant shall pay the cost of the special meeting. The Town Board shall consider the application information, the retained expert reports, as well as information and public comments received at and after the hearing. The Town Board shall grant a nonmetallic mining operator's license if it determines that the applicant has demonstrated that it will operate the nonmetallic mining operation that is the subject of the application before it in compliance with the minimum standards in, and serve the purposes of, this Ordinance.



## **Section 6. License Application Contents**

All applications for a nonmetallic mining operator's license shall provide the following information on/with the Town Application Form, and shall be certified as true and correct by all persons or entities seeking licensure as operator and by all owners of the nonmetallic mining site, if different than the operator.

### (1) Ownership Information.

- (a) The name, address, phone number(s), and e-mail address of all proposed operator(s) of the nonmetallic mining operation for which application is being made.
- (b) The name, address, phone number(s), and e-mail address of all owners, lessors, lessees, mortgagees, mineral rights owners and holders of any interest in land in any part of the entire nonmetallic mining site on which the applicant will exercise the license for which application is being made.
- (c) When any portion of the proposed nonmetallic mining site is subject to an easement, a lease, or other agreement, a copy of each fully executed lease and/or agreement affecting the proposed site.

### (2) Site Information and Maps

- (a) An ALTA land survey or certified survey map(s) showing the parcel identification number(s) of all parcels included in the nonmetallic mining site and all Adjoining Properties or Adjoining Parcels, and signed by a registered land surveyor or professional engineer.
- (b) An aerial photo of the proposed nonmetallic mining site at a scale of one (1) inch equals two hundred (200) feet, signed by the operator's license applicant and showing the location of all existing and planned or proposed interior roads, buildings, structures (including earthen structures), equipment, stockpile, storage and parking areas.
- (c) A topographic map of the proposed nonmetallic mining site extending three and one-half (3 1/2) miles beyond the site boundaries with contour intervals no greater than ten (10) feet and showing the boundaries of the site, the location and full acreage of the site, the name of all roads within one mile of the site and the names and addresses of all

Adjoining Landowners and location of all residences in the full map area.

- (d) A map on which the location of all private residential, agricultural and municipal wells within three and one-half (3 1/2) miles of the site boundary in all directions are marked and labeled as regular or high capacity and with each location given a numerical identifier. The map will be accompanied with a description of each well including such information as total depth, depth and diameter of well casing(s), geologic formations encountered during drilling, diameter of well bore(s), open well bore diameter, pumping rate, depth to static water level, depth to water level while pumping; Wisconsin Unique Well Identification Number, records of any pump tests that may be available, and other information regarding the construction, testing (physical and chemical), and operational data that may be available.
- (e) The location and names of all surface waters, including lakes, private or public ponds and streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within three and one-half (3 1/2) miles beyond the site boundaries.
- (f) A description of the distribution, depth and type of topsoil on the proposed nonmetallic mining site and the location, geological composition, depth and width of the nonmetallic mineral deposits proposed to be mined.
- (g) A map of the location or a list of addresses of all non-contiguous nonmetallic sites that will contribute extracted material to the same manufacturing or processing facility as will the nonmetallic mining site for which the operator's license application is being made.
- (h) Applicant certification that no boundary discrepancies or disputes exist or disclosing the nature of all such discrepancies or disputes, the landowners involved certifying that all will be resolved at the applicant's expense prior to the issuance of the license for which application is being made.
- (i) A copy of any and all permit applications for stormwater discharges, land disturbances, nonmetallic mining permits, etc concerning any area of the location for which operator's license application is being made under this Ordinance and that is being or will be submitted to the Wisconsin Department of Natural Resources (WI DNR), plus the WI DNR response, including any permit issued.

- (j) Baseline information concerning surface water base flows, well construction as detailed in Section 6 (2)(d) and concerning turbidity, total suspended solids, coliform bacteria levels, lead, arsenic, chlorides, nitrates and acrylamides in private wells belonging to all property owners who consent and located within one-half (1/2) mile of the perimeter of the site. Documentation shall be provided showing the manner and identity of landowners who refuse consent. All testing shall be performed by qualified independent testing agencies satisfactory to the Town, and at the operator's expense.
  - (k) A site specific Stormwater Pollution Prevention Plan (SWPPP) addressing all applicable topics covered by WI DNR Model SWPPP-NMM, version 4, or any more recent and available version in use by WI DNR that will be implemented for the site, specifically including the preparation of a site drainage map, identification of potential pollutant sources, implementation of pollutant prevention, pollutant treatment as needed, employing and using best management practices and providing for regular and periodic visual inspections by the Town or its retained experts at intervals set by the Town.
  - (l) A full and complete report of soil borings completed at the location where the applicant proposes to conduct nonmetallic-mining operations, showing at a minimum the soil types found, depth and duration, to a depth twenty (20) feet below the lowest depth to which excavation is proposed in the license application or as noted in the County reclamation license. At least one soil boring shall be provided from each twenty (20) acre portion of property in the nonmetallic mining site described in the license application, or sufficient number of borings to show that the geology is consistent throughout the site, but no less than five borings. The Town Engineer shall determine whether the number of borings meets this requirement.
  - (m) Map identifying and locating all known archeological or historical in the proposed mining area and a plan for protecting such sites, if any, that complies with all state and federal regulations and guidelines.
- (3) The Operation Plan shall include:
- (a) The anticipated commencement and cessation dates of the nonmetallic mining operation, including an explanation of what standard(s) the applicant will use to make the determination that that the planned nonmetallic operation has come to an end and when the applicant expects the proposed operation to end.

- (b) A detailed description of mining methods, machinery and equipment that will be used for extraction and processing of the extracted nonmetallic minerals and the nature, sequence and scope of the planned operation during the full anticipated life of the nonmetallic-mining operation, in detail satisfactory to the Town.
- (c) Estimated volume of nonmetallic minerals that will be extracted, by calendar year, over the proposed licensing period and over the planned life of the mine, the number and type of trucks and that will be used and the expected number of daily truck trips, correlated to the estimated volume expected to be extracted.
- (d) Identification of all public road access points to the entire site, the preferred and all proposed alternate trucking routes, traffic impact analysis on all town and county roads under consideration as preferred and alternate truck routes from origin to destination and all available route road agreements, planned frequency of site-related traffic and schedule of travel over all routes used or to be used for transporting extracted nonmetallic minerals, waste materials or processed products to or from the nonmetallic site.
- (e) A water budget that describes all ways that water will be used in the nonmetallic mining operation, including, but not limited to, sources of water and all processes in which the water will be used, the projected volume of daily water use during the proposed licensing period and the anticipated life of the nonmetallic mining operation, , and methods for treating, handling, and disposing of water, including but not limited to methods and plans for infiltration and control of run-off and erosion from water used on site, from stormwater, and from dewatering.
- (f) Description and projected quantities of all potentially hazardous materials that will be stored or used on-site, including fuel being stored on site, and a description of measures that will be used to secure, store and neutralize these materials in the event of spill or accidental discharge.
- (g) Description of all chemicals that will be stored or used on-site in manufacturing or processing operations or to control or suppress dust and a description of measures that will be used to secure, store and neutralize these materials in the event of spill or accidental discharge.
- (h) A phasing plan, consistent with the applicant's County Reclamation Permit or permit application materials, showing for each year of operation which area(s) of the site will

be used for mining operations and which areas will be used for excavation, stock piling or processing, haul roads and showing area-specific SWPPP considerations for each year at issue.

- (i) A description of all materials, compounds or substances that will be used in onsite or offsite processing of nonmetallic minerals when treated nonmetallic mine tailings containing such substances will be returned to the mine site for final deposit in that location and providing anticipated levels of concentration of such substances in the nonmetallic mine tailings.

(4) Information Demonstrating Compliance with Minimum Standards.

- (a) License applicants are responsible for providing all information necessary to establish to the satisfaction of the Town Board that their nonmetallic mining operation for which application is being made will continuously meet or exceed the minimum operation standards in Section 7 of this ordinance.
- (b) For nonmetallic mining operations commencing or expanding after the effective date of this ordinance, license applicants are also responsible for providing information necessary to establish baseline conditions at the site before nonmetallic mining operations commence or expand, including but not limited to groundwater elevations throughout the site, groundwater quality at the site including levels of total suspended solids , turbidity, chlorides, acrylamide, nitrates, lead, arsenic and any other toxic metal reasonably believed by the Town’s retained experts to be present in the area or in the type of deposit from which the extraction will be made, and in the baseflow of water within one-half (1/2) mile of the site.

- (5) Application Requirements Exception. A license applicant can request that the Town Board allow an exception from any of the application requirements of this ordinance when it can demonstrate that the information being required; a) is not available; b) can be provided by alternate means or is not necessary for deciding on a license application for a particular nonmetallic mining operation; and c) and that the public health, safety and welfare will not be adversely affected by granting such an exception. .

**Section 7. Minimum Standards of Operation**

The Town Board shall grant or renew a nonmetallic mining operator's license after it determines that the applicant has demonstrated that it will, and has (in the case of a license renewal), operate(d) the nonmetallic mining operation in compliance with all of the following minimum standards, to the

extent applicable as determined by the Town Board, for its nonmetallic mining operation during the term of the license for which application is being made:

(1) General Standards.

- (a) The borders of the entire nonmetallic mining site are visibly marked, and the site is secured by fencing or other appropriate measures.
- (b) The operator and the proposed nonmetallic mining operation will meet or exceed all requirements of this ordinance and has met or exceeded all requirements during any prior license term.
- (c) Surveys and blasting logs shall be provided to the Town and any Adjoining Landowner within forty-eight (48) hours of written request. All blasting and bumping shall be conducted strictly in compliance with Wis. Admin. Code Ch. SPS 307 and be preceded by twenty-four (24) hours notice to Adjoining Landowners and any other Town resident who files written request for notification with the operator. Blasting shall occur only between 10:00 a.m. and 3:00 p.m., except that blasting may occur after 3:00 p.m. when required for safety reasons beyond the reasonable control of the operator. The ground vibration requirements of SPS 307 shall apply to protect all Adjoining Landowners when that area is greater than the area defined by the blasting level chart in SPS 307.44 (Figure 7.44).
- (d) All other federal, state, county and local requirements, licenses and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation, filed with the Town on a continuous basis and maintained in good standing during the term of the license.
- (e) That the operator will promptly disclose to the Town every violation, citation, or other enforcement action affecting or related to the site, site operations, to the operator or the site owner(s) from any other government body or agency.

(2) Standards Mitigating Off-Site Impacts.

- (a) The operator shall take all measures necessary to control surface water runoff from nonmetallic mining operations in a manner that will prevent pollution, erosion or deposit of sediment from the nonmetallic mining site on adjoining landowners' properties, in surface water or in groundwater, and shall comply with all applicable

standards for erosion control under NR 216 and NR 151 and in its Stormwater Pollution Prevention Plan (SWPPP), submitted with its application materials.

- (b) The operator shall take all measures necessary to prevent surface water runoff from any adjoining agricultural, commercial or residential uses from coming into contact with any discharges from the nonmetallic mining site or otherwise causing contamination of surface water and groundwater.
  
- (c) When evaluating operators license applications for non-metallic mining operations and establishing buffer spaces for such operations in which no nonmetallic mining activities occur, the Town Board will consider the facts regarding the proposed mining operation, the type of mining operation, the adjacent non-mining properties and possible effects of the proposed nonmetallic mining operations on those properties. Factors to consider in establishing buffer space requirements shall include, but not be limited to, the proximity to residential structures or property, existing residential subdivisions, known archeological/historic sites, wetlands, endangered wildlife habitat, endangered species, steep slopes, water resources, proximity to public roads, and the current zoning of the adjacent non-mining property. The Town Board may require different buffer spaces for different aspects of the mining operations. For example, the mining portal or mine processing equipment activities may require larger buffer spaces than buffers for other mining activities due to the intensity and continuity of such activities and the likelihood that they will generate increased traffic, noise, light, dust, and other negative impacts on surrounding properties. In establishing buffers, the Town Board may also consider property value guarantees or other agreements that may be in place with owners of property near the proposed mining operation.

With the above in mind, guidelines for minimum buffers are as follows:

Mine portal, stationary mine processing equipment: 1,500 feet from any existing off-site residence; 500 feet from adjacent non-mining controlled property lines

Minimum buffer space between mining operations and existing off-site residences and wells : 600 feet.

Minimum buffer space between mining operations and adjacent non-mining controlled property lines or mineral rights, and public road rights of way: 200 feet.

A buffer space of fifty (50) feet shall be maintained from the top edge of slopes on the site that are greater than 3:1, when measured horizontally for distance of not more than fifty (50) nor less than twenty five (25) feet. The outside edge of any berm placed within the buffer space shall be set back at least thirty (30) feet from the edge of the public road right of way. Berms shall be vegetated

These are minimum buffer spaces only. The actual buffer space that the Town Board establishes for a particular proposed mining operation may be larger based on the above criteria and other factors/conditions specific to the site and to the mining operation proposed or smaller based on property owner agreement.

Buffers shall be maintained from property boundaries or residences measured horizontally at the surface and measured horizontally at their vertical extension below the surface.

- (d) The operator shall screen the nonmetallic mining site from public view and to abate noise or dust to the maximum extent practicable through the use of berms, additional buffer space, vegetation planting and other measures acceptable to the Town Board. Berms shall be vegetated.
- (e) Hours of truck travel and mining equipment operation shall be restricted to 7 a.m. to 5 p.m. Monday through Friday to minimize off-site impacts on area residents. The operator may submit a plan for extended hours as an exception from the standards mitigating off site impacts if it can demonstrate why additional hours are necessary for the nonmetallic mining operation and how the additional hours are or can be consistent with the public health safety and welfare, and with minimizing offsite impacts on area residents.
- (f) Trucks arriving at and leaving the nonmetallic mining site shall not interfere with the safety of children being taken to or returned from school, or with safety of area residents and commuters when traffic volume related to these pre-existing uses of area roads are the greatest. The use of compression release engine brakes (Jake brakes) is allowed only in emergency situations. All trucks hauling nonmetallic minerals and/or nonmetallic mining waste material to and from a nonmetallic mining site shall have the loaded material completely covered by a mechanical tarp or covering device specific to the hauling truck and maintained in good condition.
- (g) The operator shall limit any night lighting on the nonmetallic mining site to that which is minimally necessary for security and shall shield from illumination off-site areas by



using full cut-off shrouds. Portable lighting shall be used only where necessary to illuminate temporary work areas. Access and internal road lighting shall be designed to minimize light from operations and traffic from illuminating neighboring properties. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

- (h) The operator shall utilize all applicable dust control measures specified in Wis. Admin. Code § NR 415.075, including ambient air monitoring, the preparation and implementation of a fugitive dust control plan, and required recordkeeping, all of which shall be available to the Town. The operator shall cover stockpiles of sand located outdoors. 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 requirement of NR 415.075(4) and facilitate the Town's participation in the exemption or variance application and review procedure.
- (i) Operators of nonmetallic mining operations that process silica sand for industrial use shall monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM<sub>2.5</sub>) and Total Suspended Particulates (TSP), as measured by the methods described by NIOSH 7501 or OSHA ID-142 or by a method approved by the Town in consultation with the Town's retained experts. 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. Air monitor results inclusive of any applicable regional background concentration and showing more than 35 micrograms of PM<sub>2.5</sub> or over 150 micrograms of TSP per cubic meter of air in a twenty-four (24) hour period shall require the operator to evaluate and implement additional best management practices to minimize the PM<sub>2.5</sub> emissions or TSP. All costs of the Town's retained experts, air monitoring and corrective measures shall be borne by the operator. The operator shall compile summaries of air monitoring results that shall be provided to the Town within ten days of when the test results become available to the operator.
- (j) The following noise standards shall apply to the nonmetallic mining operations:
  - (i) Noise emitted from nonmetallic mining operations shall not exceed L10 of seventy-five (75) dbA and L50 of seventy (70) dbA, as measured at the property lines of the mine operation in line with and adjacent to existing residential structures. In addition, noise received from nonmetallic mine and onsite mining operations shall not exceed L10 of fifty (50) dbA between the hours of 7:00

a.m. and 6:00 p.m., or L10 of forty-five (45) dbA between the hours of 6:01 p.m. and 6:59 a.m., as measured at existing residential structures within one-half (1/2) mile of the exterior property lines of the mine operation. Exceptions to this condition are noise from haul trucks and vehicles entering and leaving the Property, blasting activities, and work projects done on drainage ditches or Town and County road ditches.

- (ii) With respect to noise measurement, L10 is the sound level, expressed in dbA, which is exceeded ten percent (10%) of the time for a one (1) hour noise or sound survey. L50 is the sound level, expressed in dbA, which is exceeded 50% of the time for a one (1) hour survey. dbA is the unit of sound level expressed in decibels (db) and A-weighted, as described in ANSI s 1.4, 1983, section 1.5.
- (iii) With respect to noise measurement methodology, all sound or noise measuring devices must meet Type O, I, II or S specifications under ANSI s 1.4 1983. Devices must be externally field calibrated before and after monitoring using a calibration device of known frequency and sound pressure levels. Measurements must be made using the A weighting and Fast Response characteristics of the sound measuring device as specified in ANSI 2, 1.4 1983.
- (iv) In order to demonstrate the mine operation's ability to meet the noise limitations set forth above, Operator shall conduct a noise or sound study within sixty (60) days of the Effective Date of a license, to collect noise data emanating from the mine operation, if the mine is in full operation during this sixty (60) day time period. If the mine is not in active operation during this sixty (60) day time period, Licensee shall conduct the noise or sound study within sixty (60) days after the mine resumes full operation following the Effective Date of a license issued under this ordinance. A copy of the results of the noise or sound study shall be provided to the Town.
- (v) In the event that noise from the operation exceeds the limitations set forth in Subsection 3.3.1 above, Operator shall implement mitigation measures to remedy the exceedance.
- (vi) Operator shall also implement, within thirty (30) days of the Effective Date of this permit, the nighttime use of mobile equipment strobes in compliance with federal Mining Safety and Health Administration ("MSHA") regulations to replace the nighttime use of audible back up alarms.

- (vii) Operator shall use back-up signals creating the least offensive noise audible to persons residing near the Property consistent with legal requirements.
  - (k) Operator's license applicant or renewal applicant shall provide: 1) 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 and 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 used to transport processed or unprocessed nonmetallic minerals out of the area; or 2) documentation from each such county or town showing that such town or county has reviewed the matter and is not requiring any such road agreement. .
  - (l) Nonmetallic mine tailings shall be returned after any off-site processing only to the mine site from which it originated, and only when authorized or required to be returned pursuant to the mine site's County Reclamation Permit. The Town's retained experts shall regularly and periodically test the nonmetallic mine tailings to determine whether the material and the volume of material being returned is reasonably likely to have originated from the licensed operation and to determine whether the returned nonmetallic mine tailings has been treated with unauthorized or undisclosed substances after extraction. Operators are responsible for identifying to the Town all substances being used in the processing of nonmetallic minerals and for providing load and weight information that will allow the Town to determine whether the quantities of material being returned are reasonably likely to have originated from the licensed operation.
- (3) Standards Regarding Groundwater and Surface Water.
- (a) Impacts to Groundwater Quality.
    - (i) Nonmetallic mining sites shall establish a minimum of four monitoring wells located such that one well is hydrogeologically up gradient of the mine site and the balance are hydrogeologically down and side gradient as established from existing maps and knowledge of the property. Additional wells will be required for mine sites greater than 100 acres in size or in areas where the ground water flow is noted to move in multiple directions. The location and number of wells will be determined after the initial four wells have been installed and groundwater elevations and groundwater flow direction(s) determined. The

operator shall provide initial baseline information as part of the application process, and quarterly test results thereafter of water from private wells within one-half (1/2) mile of the site and of the on-site monitoring wells with levels of lead, arsenic, total suspended solids, turbidity, chlorides, acrylamides and nitrates and any other toxic metal reasonably believed by the Town's retained experts to be present in the area or in the type of deposit from which the extraction will be made and in the groundwater within one-half (1/2) mile of the site.

- (ii) Nonmetallic mining operations shall not be the cause of any violations of any groundwater quality standards established in Wis. Admin. Code Ch. NR 140. If test results exceed Preventive Action Limit water quality standards in any on-site or private well, groundwater quality testing shall immediately be undertaken in an expanded area as recommended by the Town's retained experts. In certain cases, as established by a health professional or Town Engineer, the operator shall provide potable water until the well issues have been resolved.
- (iii) All materials containing residues of flocculants or acrylamides that are intended to be used as reclamation soils shall be handled on site in a manner that adequately protects groundwater, as determined by the Town's retained experts. Nonmetallic mine tailings containing polyacrylamide flocculants that meet the same standards for ANSI/NSF Standard 60 certification as flocculants used in public drinking water systems may be returned and used as fill in any area on a mine site. The Town Board, in consultation with the Town's retained experts, will be provided the information regarding the flocculants used and the necessary certifications prior to the placement of the nonmetallic mine tailings .
- (iv) The applicant will provide the Town Board with a plan for the licensed operation that requires periodic testing to determine the amount of flocculants in the nonmetallic mine tailings being returned to the site and that takes into account the manner of application and the location(s) within the mine site for deposit of the treated nonmetallic mine tailings being returned, with allowable concentrations, application methods and application locations intended to avoid the introduction of acrylamides into groundwater. The applicant or operator shall ensure that the monitoring plan required here is consistent with any related requirement in the Pierce County Reclamation Permit.

(b) Impacts to Groundwater Quantity.

- (i) Nonmetallic mining operations shall not extract nonmetallic materials at any depth below a point that is thirty (30) feet above the groundwater table.
  - (ii) Nonmetallic mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within one-half mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact to a private well including but not limited to the inability of the well to provide potable water on a continuous basis.
- (c) Impacts to Surface Water Baseflow. Nonmetallic mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within one-half (0.5) mile of the perimeter line of the nonmetallic mining site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below baseflows established prior to the beginning of nonmetallic mining operations.
- (d) Impacts to Surface Water Use. Nonmetallic mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters that serve as a source of water for agricultural or municipal functions such as fire protection within one-half (0.5) miles of the border of the nonmetallic mining site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below baseflows established prior to the beginning of nonmetallic mining operation
- (e) Mitigation of Impact of Nonmetallic Mining on Groundwater and Surface Water.
- (i) When groundwater test results exceed the groundwater quality standards as established in Wis. Admin. Code Ch. NR 140, in a well within one half mile of the boundary of a mining site or in any monitoring well for those conditions and substances being monitored, the remedies available under Section 11 shall be provided to the affected landowner(s) or resident(s).
  - (ii) When adverse affects on surface waters are established to the satisfaction of the Town utilizing its retained experts, which effects are initially reasonably attributable to water consumption by the licensed nonmetallic mining operations, the Town shall issue a notice and order to stop the operation until the water use and water needs of the operation have been reassessed, the WI

DNR has been notified and given the opportunity to undertake any investigation or permit review under its jurisdiction, options have been identified and evaluated to correct the adverse impact and future monitoring and evaluation measures have been put into place. During the time a stop order is in effect the affected operator can seek Town approval for an interim operating plan that does not involve the withdrawal of ground or surface water from the affected water table.

(4) Hazardous materials.

- (a) All hazardous materials shall be stored, used and disposed of in accordance with applicable state and federal law.
- (b) The operator shall not dispose of solid or hazardous wastes generated at this or any other facility, on this nonmetallic mining site.
- (c) The operator shall develop and provide its written plan for responding to spills or releases of any hazardous materials on the site to the Town, County and all area emergency service providers who may be involved in responding to such spills or releases.

(5) Town Roads.

When trucks used in the nonmetallic mining operation will haul nonmetallic minerals (excluding gravel) or Mine Tailings 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 license 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.

(6) Exceptions from and Additions to Minimum Standards of Operation.

- (a) An operator can request an exception from the minimum standards of operation in this section if it can demonstrate to the satisfaction of the Town Board that the intent of this Ordinance will be achieved through the use of alternate measures and that the public

health, safety and welfare will not be adversely affected thereby. The Town shall consider information and conclusions provided by the public, the operator and by the Town's retained experts in making this determination.

- (b) The Town Board can impose requirements in addition to or exceeding the minimum operation standards of this ordinance when it has evidence that the public health, safety and welfare will not be adequately protected without the imposition of additional measures. The Town shall consider information and conclusions provided by the public, the operator and by the Town's retained experts in making this determination.

(7) Registration License.

- (a) For nonmetallic mining operations that meet the criteria for a registration license set out in Section 4. Subparagraph (7), the Town Board shall grant a registration license after the operator submits the following information to the Town Board:
  - (i) Certification from the operator and confirmed by the Town's retained expert, that the operation meets the applicable requirements in Section 7 of this Ordinance.
  - (ii) Ownership information required by Section 6.(1) of this Ordinance.
  - (iii) A copy of any reclamation plans and license on file with Pierce County and any licenses issued by other federal, state or local agencies for the nonmetallic mining operation on that site.
  - (iv) An operation plan that applies best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operation. The Town's retained expert shall determine whether best management practices are present in the operation plan.
- (b) The Town may require additional operation-specific information after application review.
- (c) Registration licenses shall be subject to renewal every five years and are subject to all observation and enforcement provisions of this Ordinance.

**Section 8. Annual Report and License Renewal**

(1) Annual Report.

- (a) On or before March 1 of each calendar year in which a Town license is in effect, the operator shall submit an annual to the Town Board for all nonmetallic mining sites for which the operator has a license from the Town.
- (b) The annual report shall include the following information:
  - (i) Identification of the licensed operator and map showing the location of the nonmetallic mining site, active nonmetallic mining areas on the site, anticipated areas of nonmetallic mining activity and reclamation activity occurring presently and during the coming year, showing the number of acres for each, and disclosure of any ways in which the coming year's plan differs from the information in the license application materials.
  - (ii) A map or drawing accurately showing the planned areas of excavation, currently unclaimed area and reclaimed area, showing the number of acres for each type.
  - (iii) A description of activities and operations on the nonmetallic mining site during the previous calendar year including actual days and hours of operation, volume of nonmetallic minerals mined, volume transported off-site and volume and location of nonmetallic minerals waste materials on-site, with load counts, weights, and tickets available on request and disclosure of any ways in which the coming year's plan differs from the information in the license application materials..
  - (iv) A description of activities and operations on the site anticipated for the following calendar year and disclosure of any ways in which the coming year's plan differs from the information in the license application materials.
  - (v) A written report describing how the operator has been in compliance with all terms and conditions of its license and this ordinance, including all groundwater, surface water and other monitoring results.
  - (vi) A description of all areas of non-compliance with the operator's license, and a plan for bringing all such non-compliant areas of operation into compliance,



with summaries of all complaints received from adjoining landowners and members of the public since the last report, explaining how each complaint was mitigated or otherwise addressed.

- (vii) Certification that the nonmetallic mining operation continues to meet or exceed the minimum standards of this Ordinance.

(2) License Renewal.

- (a) The operator shall make written application to the Town Clerk for a renewal of its operator's license no later than six months before the date on which the license will expire. The application shall be accompanied by the payment of both the license renewal fee and the base administrative fee deposits in amounts set forth in the Town's Fee and Forfeiture Schedule .
- (b) The written request for renewal shall include the annual reports for any year during a past license period not already on file with the Town.
- (c) The Town Clerk shall review the renewal application for completeness and forward the complete renewal application to the Town Board.
- (d) The Town Board shall review the renewal application to determine if additional information from the operator is necessary to properly evaluate the application. The Town's retained experts and all fees related to processing the renewal application shall be paid from the administrative fee deposit, which shall be replenished in like amount by the license renewal applicant upon written notice from the Clerk. Maintaining the administrative fee deposit is a condition of Town processing of the license renewal application, amounts so deposited shall be held and used by the Town to pay administrative costs and for its retained experts and legal fees, and all requirements of Section 5(3)(c) of this Ordinance apply to a license renewal application administrative fee deposit.
- (e) When the operator has submitted any additional information requested, the retained expert(s) shall report to the Town Board on the review of the renewal application, site inspection and whether the nonmetallic mining operation has met and will continue to meet the requirements of this Ordinance. The Town Clerk shall then place the license renewal application on the agenda of the next regular meeting or notice a special meeting of the Town Board if necessary for action prior to the expiration of the current

license. The operator shall pay the cost of any special meeting. Members of the public may submit written comment on the renewal application in advance of the meeting. The public and the license renewal applicant may be allowed to submit information at the meeting, at the discretion of the Town Board.

- (f) The Town Board shall grant an application for renewal of an operator's license when it finds that:
  - (i) there have been no material or recurring violations of the ordinance or the license which have not been promptly and fully remedied by the operator;
  - (ii) the operator has not received multiple or recurring citations or corrective orders for violations of its operator's license under this Ordinance;
  - (iii) all applicable fees and deposits have been paid and maintained and all financial responsibility requirements have been and are being met; and
  - (iv) the nonmetallic mining operation will continue to meet or exceed the minimum standards of this Ordinance.
- (g) If the Town Board denies an application for license renewal, the Town Board shall notify the operator of the denial and the stated grounds for denial, in writing. The operator shall have fifteen (15) days from receipt of notification to request a public hearing, provide additional information and request that the Town Board reconsider its denial.

### **Section 9. Access, Observation, Enforcement, Procedures and Penalties**

- (1) Access, Observation. In addition to site access and observation by the Town's retained experts and the designated Town representative related to license renewal, the Town Board, its retained expert or any Town representative may have access to a licensed operator's nonmetallic mining site at any time to protect the health and safety of the public, to observe operations and/or to evaluate compliance with the minimum operation standards and related requirements of this ordinance, with advance notice to the operator and upon showing proper identification. The Town official or designated representative may have access to the mining site without advance notice in circumstances in which the Town has reasonable cause to believe that there is some condition, violation, or problem at the site that constitutes a threat of imminent harm to the public health, safety, or welfare.

- (2) Violations. The following are violations of this ordinance:
- (a) Engaging in nonmetallic mining in the Town without an operator's license.
  - (b) Noncompliance with the minimum operation standards and related requirements of this Ordinance during a license term.
  - (c) Providing incorrect or false information or statements on documentation submitted during the Town licensing process during Town inspection of the nonmetallic mining site or operation.
  - (d) Failure to timely file an annual report.
  - (e) Failure to take prompt and appropriate remedial or other action in response to a notice of water or air testing results in excess of allowable standards, notice of violation, citation, request for additional administrative fee deposit or financial assurance or other directive from the Town.
  - (f) Failure to comply with all federal, state, county and local laws and regulations That govern or affect the operator's nonmetallic-mining operation.
- (3) Remedies. The Town Board or Town Chair may take any appropriate action or proceeding against any operator or the landowner of any portion of a nonmetallic mining site when the operator is deemed by the Town Board to be in violation of this Ordinance, including, but not limited to, any of the following actions:
- (a) Issue a stop work order.
  - (b) Issue a notice of violation and order that specifies the action to be taken to remedy the situation, within any deadline set to do so in the notice or order. If the operator fails to complete the action specified in the notice of violation within the deadline stated in the notice, the Town may complete the required action and recover the cost of doing so from the operator.
  - (c) Issue a citation (s).
  - (d) Refer the matter to legal counsel for consideration and commencement of legal action

including the assessment of penalties under sub. (5) and injunctive relief.

- (e) After notice and a hearing, suspend or revoke any operator's license for any violation of this Ordinance.

(4) Hearings.

- (a) Any person who received a notice or order issued under Section 9 of this Ordinance or is denied an initial application for an operator's license or a license renewal may request a public hearing before the Town Board by filing a written petition with the Town Clerk requesting the hearing, setting forth the name, address and telephone number of the person requesting the hearing, a brief statement of the person's interest in the operator's license at issue, the grounds for requesting the hearing and the outcome being requested. The petition shall be filed within fifteen (15) days of the date of service of a notice or order under Section 9 or within fifteen (15) days after service on the operator or applicant of written denial of a license application, transfer or amendment application, registration license or license renewal application. Upon receipt of such a request, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof, which hearing shall be scheduled for a date within thirty (30) days of filing the request.
- (b) At or within fourteen (14) days after the hearing, the Town Board shall vote to sustain, modify or withdraw the previously issued notice or order or action to grant or deny the license, transfer, amendment, registration license application or license renewal at issue, based on its findings as to whether the provisions of this Ordinance have been violated or whether the applicant can meet the standards and requirements of this Ordinance. The person who requested the hearing shall be notified in writing of the Town's findings within ten (10) days of the Town Board decision.
- (c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing, entered as a matter of public record in the office of the Town Clerk, and shall include a copy of every notice and order issued in connection with the hearing and decision.
- (d) When an operator's license is revoked, all rights thereunder shall terminate immediately. The only nonmetallic mining operation that may be engaged in after license revocation shall be reclamation activity conducted in compliance with the requirements of the operator's reclamation permit from Pierce County.

(5) Penalties.

- (a) Any operator, landowner, person or entity adjudicated to have violated this ordinance shall pay a forfeiture of not less than \$1,000.00 per violation nor more than \$5,000.00 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
- (b) Any operator, landowner, person or entity adjudicated to have violated this ordinance shall pay court costs, the Town's actual attorney's fees and the actual costs of the Town's retained experts.

(6) The 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 or future violations(s).

**Section 10. 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: Amounts necessary for the repair and extraordinary maintenance of Town roads used for truck traffic transporting any materials to or from the nonmetallic mining site at which the operator's license is in effect, during the duration of the license term. Repairs and extraordinary maintenance is , defined as everything other than crack filling, minor surface repair, chip seal, shoulder pull-up, mowing and less than annually required pavement marking.
  - (b) Water Supply: Amounts necessary to provide an alternate water supply to affected residences or agricultural operations when the groundwater is shown to have been adversely affected by the nonmetallic mining operation, as determined from the ongoing groundwater testing.
- (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 when the amount available has been used for such purposes and additional financial assurance must be provided, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have fifteen (15) days to provide the additional amount in the form of an irrevocable letter of credit.
- (4) The operator shall also provide proof to the Town that it has provided full financial assurance to Pierce County for site reclamation required under Wisconsin law and the County's Reclamation Permit.

### **Section 11. Remedy for Damage to Private Water Supply**

- (1) Adjoining Landowners have a remedy under this ordinance for damage to their private water supply:
  - (a) When any applicable groundwater quality standard in Wis. Admin. Code Ch. 140 is exceeded in the private well serving the owner's property for substances, total suspended solids and turbidity being tested for as required by this Ordinance.
  - (b) When a substantial adverse impact on the quantity of water available for reasonable use from a private well on the owner's property occurs, including but not limited to the inability of the well to provide potable water on a continuous basis.
  - (c) When lowering of surface waters that serve as a source of water for personal, agricultural or municipal functions on the owner's property occurs, to levels below base flow levels at the beginning of nonmetallic mining operations for more than five (5) days.
- (2) (a) When an operator receives test results for a well subject to baseline and periodic testing that exceed a Preventive Action Limit for public health groundwater quality the operator shall immediately notify the Town, the affected property owner, and the resident, if different. At the Operator's expense, additional testing of the well or wells in which the exceedance is present will be completed and the Owner or Operator of the facility shall, within 10 days of the receipt of the first round of analytical data exceeding Wis Adm Code NR 140 limits, notify the Department of Natural Resources in writing that the preventive action limit or enforcement standard has been attained or exceeded citing a preliminary analysis of the cause and significance of the concentration (Wis Adm Code NR 140.24 (1) (a.)). The Operator shall take those steps as defined by the WDNR to

investigate, rectify and /or mitigate the cause or causes of the increased concentrations observed in the well or wells as stipulated in Wis Adm Code NR 140.24 (Response when a preventive action limit is attained or exceeded) and NR 716 (Site Investigations).”

- (b) When an operator receives test results for a well subject to baseline and periodic testing that exceed an Enforcement Standard limit for public health groundwater quality, at the operator’s expense, it shall take immediate steps to provide an adequate interim potable water supply as required under (4) of this section and the operator shall conduct an investigation into the extent of the Enforcement Standard impact in the aquifer and develop a plan to limit further contamination of the aquifer, reasonably restore the aquifer, and adequately protect public health and safety. Such plan shall be subject to approval by the Town Engineer.
- (3) Any property owner seeking a remedy under this section of this Ordinance shall serve notice on the operator of the occurrence of the event giving rise to a remedy, explaining the nature and extent of the problem, and shall simultaneously serve a copy of the notice on the Town.
- (4) Within twenty-four (24) hours of receipt of such a notice and absent earlier operator action to do the same, the Town may use any financial assurance funds held as required under section 10 of this ordinance to provide an adequate interim water supply to the affected property or resident. The Town shall also use the said funds to indemnify the Town for any claims filed under Wis. Stat. §281.77(4) and for any test review or verification measures taken by the affected landowner. The interim water supply shall continue to be provided until the Town has received the report or plan required by sub. (5).
- (5) Within thirty (30) days of receipt of notice under sub. (2) (3) or (4), the operator shall provide the property owner and the Town with a report that can be verified by the Town’s retained experts and/or the affected landowner demonstrating that the impact to the property owner is not attributable to the nonmetallic mining operation or if the impact is attributable to the nonmetallic mining operation, a plan for a permanent alternate water supply, the cost of which shall be paid by the operator, including continuation of the interim water supply until the permanent alternate water supply is installed and operating satisfactorily.
- (6) A property owner beyond the ½ mile of the mine site may apply to the Town for use of funds under Section 10 to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in paragraphs (3) to (5).

- (7) This remedy is in addition to any other legal remedies available to the affected landowner.

## **Section 12. 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 final order of a court of competent jurisdiction, 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 or a court of competent jurisdiction such judgment is not applicable to any parcel of land not specifically included in said judgment.
- (2) The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town.
- (3) This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to its effective date.

## **Section 13. Use of Mining Operator's Agreement.**

The Town Board may require the applicant to enter into a written recordable Nonmetallic Mining Operator's Agreement specifying the requirements and conditions of the Operator's License if a license is approved. Any provisions of this Ordinance may be modified in such a written Mining Agreement between the Town and an operator if the Town Board first determines that the Agreement will protect public health, safety and welfare at least as well as the protections provided by this Ordinance. The Town Board shall consider information and opinions from the Town's retained experts in making this agreement. Costs of negotiating, preparing, reviewing, and enforcing this Mining Operator's Agreement shall be paid by the Operator, including, but not limited to all professional fees the Town incurs related to the Mining Operator's Agreement. The Town Board may require the applicant to submit a cash deposit in an amount estimated to pay the costs associated with negotiating, preparing, reviewing and enforcing the Mining Operator's Agreement. If the deposit is not sufficient to cover the costs, the applicant shall pay additional amounts to cover the



costs before the Town executes the Agreement. Any amounts exceeding the actual costs shall be returned to the applicant.

**Section 14. Effective Date**

Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

ADOPTED this 18<sup>th</sup> day of March, 2013, by a vote of two - yes and one -\_no.

Jerry Kosin  
\_\_\_\_\_  
Town Chair

Published this 28<sup>th</sup> day of March, 2013

Attest: Jim Allen -\_Town Clerk

Posted this 20<sup>th</sup> day of March, 2013, in the following three locations:

Oak Grove Town Hall – N 4939 1100<sup>th</sup> Street \_\_\_\_\_

Valley Bar – W10299 U.S. Highway 10 \_\_\_\_\_

St Mary’s Big River – W10137 570<sup>th</sup> \_\_\_\_\_

Attest: \_\_\_\_\_ Jim Allen -Town Clerk

**Additional documents referred to in the draft Ordinance that will have to be developed:**

- 1) Blasting license ordinance - enact
- 2) Citation ordinance - amend.
- 3) Fee and Forfeiture Schedule: a resolution that covers the application and deposit amounts plus all fees charged by the Town under any procedure or ordinance and all forfeitures imposed by all Town ordinances, including this one. Draft attached (as to this Ordinance)
- 4) Operator's License Application Form - contents as described in Section 6.

**Town Fee Forfeiture Schedule: Nonmetallic Mine Operator's License**

License Application Fee	\$ 500.00
-Base Administrative Fee Deposit	\$15,000.00
License Renewal Fee	\$ 500.00
-Base Administrative Fee Deposit	\$10,000.00
License Transfer Fee	\$ 500.00
-Base Administrative Fee Deposit	\$ 5,000.00

Forfeitures:

First offense in a year	\$ 1,000.00
Second and all other offences in a year	\$ 5,000.00