

TOWN OF DRAMMEN
2013-M2

NONMETALLIC MINE OPERATOR'S LICENSES, CONDITIONS, AND PENALTIES

I Finding, Purpose and Authority

(1) Findings. Nonmetallic mining operations, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. Studies have documented that nonmetallic mining operations can have adverse impacts on groundwater and surface water, and can generate harmful levels of dust and noise particularly if blasting and crushing operations are undertaken. Nonmetallic mining sites can have negative impacts on the landscape and aesthetics if not properly screened, and can present safety concerns to members of the public if not properly secured. Truck traffic from such operations can also generate off-site impacts including safety concerns to children and other residents. While certain aspects of mining operations are subject to state or federal regulation, there is no comprehensive state or federal regulation of nonmetallic mining operations. Many aspects of nonmetallic mining operations are left unregulated with potential adverse impacts to the public health, safety and welfare of the residents of the Town of Drammen.

(2) Purpose. The purpose of this Chapter is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining operators 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 ground and surface waters, 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 Drammen.

(3) Authority. This Chapter is adopted by the powers granted to the Town of Drammen by the Town's adoption of Village powers under Wis. Stat. §§60.10 and 61.34, its authority under '66.0415, and other authority under the statutes. Any amendment, repeal or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal or recreation.

II Applicability and Scope

(1) This Chapter shall apply to all nonmetallic mining operations and mine sites within the Town except as set forth in sub. (2).

- (2) This Chapter shall not apply to the following nonmetallic mining operations:
- (a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
 - (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
 - (c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
 - (d) Excavations for building construction purposes conducted on the building site.
 - (e) Nonmetallic mining at nonmetallic mining sites where less than ten acres of total affected acreage occurs over the life of the mine.
 - (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.
 - (g) Emergency mining or removals where to delay such activities may cause a danger to the public.

III Definitions

- (1) "Adjoining landowner" means any property within 2 mile of the proposed mine site regardless of whether there is a residence or structure on the property.
- (2) "Board" means the Town Board of the Town of Drammen.
- (3) "Chair" means the Town Board Chairperson of the Town of Drammen.
- (4) "Clerk" means the Town Clerk of the Town of Drammen.
- (5) "Landowner" means every person who has title to land in fee simple or who is a purchaser in a land contract for the land.
- (6) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, crushing, or screening facilities, private roads or haulage ways associated with nonmetallic mining operation; and all lands contiguous to the nonmetallic mining operation under common ownership or control of the owner or operator.
- (7) A mining operation, means operations or activities for the extraction from the earth of

mineral aggregates and nonmetallic minerals and related operations or activities, including, but not limited to, excavation, grading, or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes including, but not limited to, stockpiling, crushing, screening, scalping, dewatering, and blending. It does not include removal from the earth of products or commodities that contain only minor or incidental amounts of nonmetallic mining minerals such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

(8) "Nonmetallic minerals" 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.

(9) "Nonmetallic mining" means any or all of the following:

(a) Extraction from the earth of mineral aggregates or nonmetallic minerals for, off-site use or sale, including drilling and blasting as well as associated activities such as excavation, grading and dredging of such materials.

(b) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, washing, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

(c) Manufacturing processes aimed at producing nonmetallic products for sale or use by the operator.

(d) Stockpiling of nonmetallic products for sale or use off-site and stockpiling of waste materials.

(e) Transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site.

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(10) "Operator" means any person who is engaged in, or who has applied for a license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

(11) "Operator Agreement" means an agreement entered into between an Operator and the Town with regard to nonmetallic mining operations or mining within the Town of Drammen.

(12) "Operator's license" or "license" means the license required of mining operators in this Chapter to undertake nonmetallic mining in the Town.

(13) "Site" means all the land described in the application which will be subject to control by

the operator while a license hereunder is issued.

(14) "Town" means the Town of Drammen, Eau Claire County, Wisconsin.

(15) "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 a reclamation plan.

IV License Required

(1) License Requirement. No person shall operate a nonmetallic mine within the Town without first obtaining an operator's license from the Board.

(2) License Term

(a) Except for the first year of operation under this Chapter, an operator's license shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Chapter, the operator's license will extend from the date of issuance until the second June 30th after issuance of the initial license.

(b) An operator's license may be renewed as set forth in this ordinance, but a temporary operator's license may not be renewed.

(3) 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.

(4) License Transfer. An operator's license may not be transferred. Any proposed successor in interest to a licensee must apply for its own license.

(5) License Revocation. An operator's license may be revoked under the procedures in Section **IX**.

(6) Temporary Operator Licenses. The Board may grant a temporary non-renewable operator's license not to exceed six months, for mining operations within the scope of this Chapter that were in existence as of the effective date of this Chapter, provided that the operator certifies that its operation will comply with the minimum standards in Section **VII** and that the operator submits a complete application under Section **V** within 60 days of issuance of the temporary license.

V Procedures for Applying For a License to Mine

(1) Application Form. The Application Form for a license to mine in the Town of Drammen shall be available from the Clerk. In lieu of submitting an application on the Town form, an applicant may initially submit a complete copy of any conditional use permit application submitted to Eau Claire County for the mine. If additional information required by this ordinance is necessary for processing, the Clerk shall so notify the applicant.

(2) Application Submittal. The applicant shall submit six (6) copies on paper and one copy in Microsoft Word format of the Application Form and all required documentation required under Section **VI** to the Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Chapter in amounts established from time to time by the Board. The fees shall be paid to "Treasurer, Town of Drammen." The Application Form shall be signed by the operator and by the landowner. At all times, the application, any additional or supplemental material, and any retained expert reports shall be public records as described in sections 19.35 (1) (a) and (am), Wisconsin Statutes.

(3) Initial Review by the Board.

(a) Preliminary Review. The Clerk shall forward the application to the Chair for initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Chair shall schedule the application for a hearing under sub. (4).

(b) Additional Information. If the Chair determines that application is incomplete, the submission of additional information may be requested.

(c) Additional fees. If the Chair determines that additional expertise is required, the Board shall authorize retaining the services of an engineering firm or other qualified person or persons with appropriate expertise to advise the Board. The Board may determine that some or all of the retained expert's fees shall be charged to the applicant as an administrative fee. Retained expert fees for general advice or for education of the Board cannot be part of the administrative fee, but any services specific to an application can be charged to that applicant. The Chair shall give written notice to the applicant of the additional administrative fee to be charged to cover the cost of the services of any such retained expert. The additional fee shall be paid before review of the additional information is undertaken.

(d) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall advise the Board whether the application meets the requirements of this Chapter.

(4) Decision by the Board.

(a) Notice and Hearing. Once the application is complete and any report by a retained expert has been completed and filed with the Clerk, the Clerk shall place a public hearing for the application for a license under this ordinance and the conditional use permit on the agenda for the next regular meeting of the Board which is more than fifteen days after the application was deemed complete. If a special meeting is requested by the applicant, the applicant shall pay the costs incurred for the special meeting. The Clerk shall post public notice of the hearing, shall publish notice of the hearing in the Mondovi Herald-News, and shall mail notice of the hearing to all owners of land abutting the proposed site, as shown on the most recent tax roll, at least fifteen (15) days prior to the date scheduled for the hearing. At the public hearing, the Board shall take information from the applicant and the retained expert and shall hear public comment on the proposed operators license and conditional use permit.

(b) Board Decision. Following the public hearing, the Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the operator's license. If a special meeting is requested by the applicant, the applicant shall pay the costs incurred for the special meeting. The Board shall review the complete application, the retained expert's report, and public comments made at the public hearing. The Board may grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Chapter. If the Board denies the license, the applicant may request a hearing under the provisions of Section **IX**(3).

(5) Special Exception Procedure.

(a) Any special exception requested by the applicant in the initial application shall be processed with the application as set forth in this section **V**.

(b) If, at some later date, a licensed operator requests a special exception, it shall apply for the same in writing, with sufficient information concerning the reasons for the request and the anticipated effects of granting the special exception. The procedure set forth in section **V** (4) shall be followed to process the application.

(6) Operator Agreement. Either in conjunction with the application process or at some later time, the Town and an Operator may enter into an agreement which will permit operation of the mine in a manner which is not consistent with all provisions of this ordinance. Before such an agreement can be executed, the procedure set forth in section **V** (4) shall be followed and the Board must determine that the agreement would limit the impact of the operation on the Town, its residents, and neighbors of the site at least as much as strict enforcement of this ordinance would limit that impact.

VI License Application

Except as excused by section **V**, (1) all applicants for a mining license shall submit the following information:

(1) Ownership Information:

(a) The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation. If the applicant is a business organization, the requested information shall be provided about the home office of the organization, and about a corporate officer, partner, or member responsible for oversight of the operation, and about a local responsible contact person.

(b) The name, address, phone number(s), and e-mail address of all owners, vendors, or lessors of the land on which the mining operation is proposed.

(c) If the operation is proposed to be on leased land, a copy of a fully executed lease between the landowner and the operator who will engage in mining operations on the proposed site.

(2) Site Information and Maps. Provided all legends on the map remain clear and visible, required mapping information may be combined on one or more maps.

(a) A survey map of the site prepared and certified by a Registered Land Surveyor which also shows all parcel identification numbers of land within the site.

(b) An aerial photo of the proposed site at a scale of 1 inch equals 660 feet signed by both the operator and the landowner.

(c) A topographic map of the site extending 1/2 mile beyond the site boundaries at contour intervals no greater than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads shown on the map within one mile of the site.

(d) A map showing the location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(e) A map on which the all residential, agricultural and municipal wells within 2 mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.

(f) A map showing 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 1/2 mile of the site.

- (g) A map showing the distribution, depth and type of topsoil on the site as well as the geological composition and the dimensions of the nonmetallic deposit to be extracted.
 - (h) A map identifying the location of all other non-contiguous sites within the Town and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.
- (3) Operation Plan
- (a) Dates of the planned commencement and cessation of the operation.
 - (b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
 - (c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
 - (d) A map showing the location of road access points and the proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
 - (e) 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 materials or products to or from the site.
 - (f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water including methods used for infiltration and control of run-off.
 - (g) A listing of any hazardous materials, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
 - (h) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust.
- (4) Information Demonstrating Compliance with Minimum Standards.
- (a) The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section **VII**.
 - (b) For mining operations commencing after the effective date of this Chapter, the operator shall also provide information establishing baseline conditions at the site before mining operations

commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water with 2 mile of the site.

(5) Special Exceptions. The applicant can request a special exception from the application requirements of this section if it can demonstrate that the information required can be provided by alternative means or is not necessary for an evaluation of the particular mining operation, and that the public health, safety and welfare will not be adversely affected thereby.

VII Minimum Standards of Operation

The Board may grant a license to mine if the applicant can demonstrate that the following minimum standards of operation will be met:

(1) General Standards.

(a) The operator shall stake or otherwise mark the borders of the entire site and shall secure the site by fencing or other equally effective measures.

(b) The operator shall demonstrate compliance with all of the other provisions of this Chapter.

(c) The operator shall have obtained a blasting permit from the Town of Drammen for any blasting operations.

(d) The operator shall demonstrate that all other applicable federal, state and local permits and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation.

(e) The operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body or agency against the mining operation within the Town.

(2) Standards Regarding Off-Site Impacts.

(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 Wisconsin Administrative Code chapters NR 216 and NR 151 as applicable.

(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 wooded or natural buffer area of a minimum of 75 feet wide along bordering property lines and public roadways.

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

(e) The operator shall limit normal hours of operations to 10 hours a day Monday through Friday during daylight hours with no mining, material removal, drying or treatment allowed on Saturdays, Sundays or Holidays unless the owner operator notifies the Chair within 48 hours of its operation on Saturdays, Sundays, Holidays or outside of stated hours of operation when a natural disaster has occurred necessitating non-metallic mining materials for emergency repair work. Equipment maintenance may take place Monday through Friday until 8:00 p.m. The operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare.

(f) The operator shall ensure that trucks from the mining site shall not interfere with the safety of children being taken to or returned from school, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.

(g) The operator shall limit night lighting on site, to that which is minimally necessary for security and shall be shielded from illuminating off-site areas. There shall be no illumination of required buffer areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

(h) No person may cause, allow or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne. Operations shall not cause the concentration of airborne particulate matter to exceed the standards established in Title 40, Code of Federal Regulations, Part 60, Subpart OOO, or those established in Chapter NR 415, Wisconsin Administrative Code and shall utilize all relevant dust control measures specified in Wis. Admin. Code ' NR 415.075.

(j) The operator shall install at least four dust monitor devices capable of measuring particles having any dimension of 2.5 microns or less. The devices shall be installed on the perimeter of the mine site, in locations chosen to provide maximum coverage and which are approved by the Board. Prior to commencing any excavation or mining activity, the operator shall operate the monitors for at least two weeks to obtain a base line of airborne particulate matter with which subsequent readings will be compared. The results of monitoring after operations commence shall be delivered to the

Town Board every three months and upon request at any other time.

(j) The operator shall control off-site noise levels to the maximum extent practicable. Noise generated by mining operations shall not cause the average noise level for any one-half hour to exceed 60 dbA between 7 a.m. and 9 p.m. or to exceed 50 dbA between 9 p.m. and 7 a.m. as measured within 100 feet of any residential dwelling nor shall it cause noise that exceeds 80 dbA at the site's property lines.

(k) Intermittent or impact noise caused by operation of the mine, including blasting, that is deemed by the Health Department to be creating a public nuisance to area residents, shall be abated.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts on Groundwater Quality.

- (i) Mining operations shall not cause groundwater quality to violate the standards in Wis. Admin. Code ch. NR 140.
- (ii) Mining and processing operations shall have active monitoring wells as recommended by the Town. The operator will take monthly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit which the extraction will be made. The Town may request more frequent samples if it believes such samples are necessary.
- (iii) At any site where Extraction of non-metallic minerals shall have active monitoring wells as recommended by the Town the operator will take quarterly samples for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit which the extraction will be made. The Town may request more frequent samples if it believes such samples are necessary.

(b) Impacts to Groundwater Quantity.

- (i) Mining operations shall not extract materials at a depth below any point that is 10 feet above the groundwater table.
- (ii) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 2 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

(b) Impacts to Surface Water.

- (i) The operator shall comply with all requirements of Eau Claire County and the State of Wisconsin with respect to the effects of mining operations on surface waters.
- (ii) Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within a ½ mile of the mine site property lines, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of the mining operation.

(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 waste materials containing any hazardous chemicals on the site or elsewhere in the Town of Drammen except at a facility licensed to store or dispose of said materials
- (c) The operator shall have a written plan on the site for responding to spills of any hazardous materials on the site.

(5) Special Exceptions.

- (a) The operator can request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Chapter can be achieved through by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.
- (b) The Board can impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health safety and welfare will not be adequately protected without the imposition of additional measures.
- (c) The minimum standards of this exception shall not apply in the event the Town and the Operator have entered into a mining agreement which satisfies the Town that the intent of this Chapter has been achieved through the provisions of this section.

VIII Annual Report and License Renewal

(1) Annual Report.

- (a) No later than March 1 of each calendar year, the operator shall submit an annual report to

the Board for all active and intermittent mining sites for which the operator has a license in the Town of Drammen.

(b) The annual report and shall include the following information:

(i) An identification of the operator and location of the mining site.

(ii) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area noting the number of acres for each type.

(iii) A description of activities and operations on the site for the previous calendar year.

(iv) A description of activities and operations on the site anticipated for the following calendar year.

(v) A written report demonstrating how the operator has been in compliance with all terms and conditions of its license and this Chapter. The report shall also include any groundwater, surface water and other monitoring results required by this Ordinance.

(vi) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(vii) A listing of each violation or notice of violation received from any State, Federal or other governmental or municipal body or agency.

(viii) A summary of all verbal, phone, email, written or other complaints received from any person residing or visiting an area within ½ mile of the proposed mine site boundaries.

(ix) Any other information requested by the Town of Drammen.

(2) License Renewal.

(a) The operator shall make written request to the Clerk for a renewal of the license to operate the mine no later than March 1 of the year in which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town's Schedule of Fees for Permits, Licenses, and Other charges.

(b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of subsection (1).

(c) The Clerk shall review the renewal application within 30 days of receipt to determine whether the application is complete and upon a determination that it is complete shall forward it to the Board.

(d) The Town shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case the Chair may inspect the site. If no additional information or expertise is deemed necessary the Board shall schedule the application for a decision under par (g).

(e) Additional fees. If the Administrator determines that additional expertise is required, the Board shall authorize hiring an engineer or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost additional review by retained expert. The additional fee shall be paid before the additional review is undertaken.

(f) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Board on whether the renewal application meets the requirements of this Chapter. The Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Board prior to the expiration of the license.

(g) The Board may grant the request for renewal if it finds:

(I) there have been no material violations of the Chapter or the license which have not been appropriately remedied, and

(ii) the operator has not received multiple or recurring citations or orders for violations of the operator's license or this Chapter.

(iii) all applicable fees have been paid and financial responsibility requirements have been met.

(h) If the Board denies the request for renewal, the Board shall notify the operator and provide the operator with an opportunity for a hearing.

IX Inspection, Enforcement, Procedures, ~~and~~ Penalties and No Safe Haven

(1) Inspection. In addition to an annual inspection pursuant to Section **VIII** (2), the Board or other authorized representative of the Town, may make inspections at any time to determine the condition of nonmetallic mining sites in the Town in order to safeguard the health and safety of the

public and determine compliance with the minimum standards under this Chapter upon showing proper identification.

(2) Violations. The following are violations under this Chapter:

- (a) Engaging in nonmetallic mining without an operator's license granted by the Board.
- (b) Failure to comply with the minimum standards and other requirements of this Chapter.
- (c) Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
- (d) Failure to timely file the annual operational report under Section **VIII**.
- (e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section **X** or other order issued by the Town.

(3) Hearings

- (a) Any person affected by a notice and order issued in connection with the enforcement of this Chapter under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Board, provided such person shall file with the Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or upon 30 days upon denial of an application for a renewal. Upon receipt of the petition, the Clerk shall set a time and place for a hearing before the Board and shall give the petitioner written notice thereof.
- (b) After the hearing, the Board by a majority vote, shall make findings as to whether the provisions of this Chapter have been complied with, and shall sustain, modify or withdraw the notice under sub. (4), or grant or deny the license or license renewal, and the petitioner shall be notified within ten days in writing of such findings.
- (c) The proceedings of the hearing, including detailed findings of fact and conclusions of law, and the decision of the Board shall be in writing and entered as a matter of public record in the office of the Clerk. Such record shall also include a copy of every notice and order issued in connection with the case. In addition, the Board may employ a person capable of producing a verbatim transcript of the proceeding at the cost of the party requesting the hearing.

(d) Appeal. A person aggrieved by any decision of the Board made under this chapter, may, within 30 days after the filing of the decision in the office of the Clerk, commence an action seeking the remedy available by certiorari. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

(4) Remedies.

The Board may take any appropriate action or proceeding against any person in violation of this Chapter, including the following:

(a) Issue a stop work order.

(b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.

(c) Issue a citation in accord with the Town's citation ordinance or any other enforcement policy in effect.

d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (6) and injunctive relief.

(e) Suspend or revoke the operator's license under sub (5).

(5) License Suspension or Revocation. After giving notice and a hearing, the Town may be suspend or revoke an operator's license for a violation under **IX** (2).

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5000 per violation and be subject to injunctive relief. Each day a violation exists is a separate violation.

(b) Any person or entity adjudicated to be in violation of this Chapter shall pay court costs and reasonable attorneys' fees. The remedies provided herein shall not be exclusive of other remedies.

(7) 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).

(8) Compliance with the requirements of this ordinance does not provide a safe haven from actions brought by non-governmental persons or organizations in nuisance, trespass, or under any other legal basis for suit.

X Financial Assurance

(1) Financial assurance shall be provided to the Town as a condition of license approval in the amount necessary for the following:

(a) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 2 miles of the site's property boundaries or such other area shown to be impacted by the operator's operations.

(2) The form of financial assurance made to the Town shall be that form agreed to by the Board and may include performance bonds, irrevocable letters of credit or other measures agreed upon by the Board.

(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 30 days to provide the increased amount.

(4) The operator shall also provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

XI Damages to Private Water Supply

(1) A property owner who owns a well within 2 mile of the mine site may seek remedies under subs (2)-(5) for any of the following damages to private water supply:

(a) A preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.

(b) A substantial adverse impact on the quantity of water from a private well on the owner'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 owner's property to levels below base flow levels for more than 5 days.

(2) Any property owner under sub (1) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine operator of the occurrence of the event under sub (1) explaining the nature and extent of the problem.

(3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section X to provide an adequate interim water supply. The Town shall also use funds under Section X 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) Within 20 days of receipt of notice under sub (2), the mine operator shall provide to the property owner and to the Town a report that demonstrates that the impact to the property owner 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 property owner review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.

(6) A property owner who owns a well beyond 2 mile of the mine site may apply to the Town for use of funds under Section **X** 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 subs (2) to (4).

XII PROPERTY VALUE GUARANTY The purpose of this section is to protect the defined property owners from loss in real estate value because the Town has issued a license under this ordinance.

(1) Prior to the initial issuance of a license under this ordinance, the assessed value and fair market value of every quarter-quarter or smaller parcel of land, any part of which is one mile or less from any part of the mine site.

(2) Determination of Fair Market Value.

- 1) An owner desiring to sell any such property shall notify the Town of that fact not later than March 1, 2031.
- 2) The owner and licensee shall then agree on an appraiser who is licensed as a real estate appraiser in Wisconsin.
- 3) In the event licensee and the owner cannot agree on an appraiser, the owner shall select a bank or credit union in Eau Claire County, with whom the owner does not do business, to provide the name of an appraiser it regularly employs to do appraisals.
- 4) The appraiser selected pursuant to 2) or 3) above shall provide applicant and the owner with an appraisal of the fair market value of the property assuming the non-metallic mine did not exist.
- 5) The licensee shall pay for the appraisal.

B. Sale of Property.

- 1) The owner shall then enter into a listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude licensee as a potential buyer so that if licensee purchases the property, no commission shall be due.
- 2) Before accepting any offer of less than the Fair Market Value, the owner shall give three business days notice by personal delivery of a copy of the offer to licensee's agent named in the license application. If the licensee objects in writing within two (2) business days of receipt of the offer, the owner shall not accept such offer.
- 3) If the owner sells the property for less than the Fair Market Value, licensee shall pay the owner the difference between the selling price and the Fair Market Value less the realtor's commission that would have been payable on that difference. The licensee shall make the payment within 30 days of the recording of the conveyance of the property.
- 4) If the property is not sold within 180 days of the date of the listing contract, licensee shall immediately purchase the property for the Fair Market Value less the realtor's commission that would have been paid if sold under the listing contract.

C. Applicability.

- 1) The Guaranty shall apply only once for any property identified in paragraph XII(1), above.

2) Property which is for sale on the date licensee first filed its application with the Clerk shall not be eligible for the Guaranty.

3) Properties do not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third party by a transaction which is not considered an arms length transaction (such as a sale or gift to a relative).

XIII Severability, Interpretation, and Abrogation

(1) Severability.

(a) Should any section, clause, provision or portion of this Chapter 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 Chapter shall remain in full force and effect.

(b) If any application of this Chapter to a particular parcel of land is adjudged unconstitutional or invalid by a final order or 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 Chapter shall be liberally construed in favor of the Town and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town .

(3) This Chapter is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Chapter.

ADOPTED this 28th Day of February, 2013.

_____ Town Board Chairperson

_____ Town Clerk