

ORDINANCE 2024-01-02

AN ORDINANCE CREATING THE TOWN OF RUTLAND NONMETALLIC MINING ORDINANCE

WHEREAS, the Town of Rutland exercises village powers pursuant to a resolution of the town meeting granting such powers pursuant to §60.10, Wis. Stats; and

WHEREAS, residents of the Town have expressed concerns with regard to the adverse effects of nonmetallic mining operations within the Town and the potential for adverse impacts to the public health and safety, the contamination of private water supply systems, and impacts on the value and enjoyment of property within the Town; and

WHEREAS, the Town Board finds that it is in the public interest to protect the public from adverse effects of nonmetallic mining operations by imposing certain regulations to minimize or remedy the external impacts of such operations; and


WHEREAS, the Town Board has further determined that it is necessary and appropriate to institute a licensing system to assure that nonmetallic mining operations are properly monitored and carried out in a manner consistent with the public interest; and

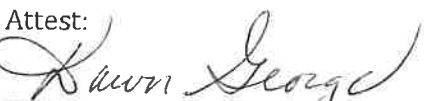
NOW, THEREFORE, the Town Board of the Town of Rutland, Dane County, Wisconsin does ordain as follows:

Section 1. The Town of Rutland Nonmetallic Mining Ordinance is hereby created to read as set forth in Addendum A, attached hereto.

Section 2. This ordinance shall be effective on the day after publication hereof or of an appropriate notice hereof as provided by law.

Adopted this 23rd day of January, 2024.


Kent Knutson, Town Board Chair

Attest:

Dawn George, Town Clerk

TOWN OF RUTLAND NONMETALLIC MINING ORDINANCE

Section 1.01 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.

(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 Rutland.

(3) Authority. This chapter is adopted by the powers granted to the Town by the Town's adoption of Village powers pursuant to Wis. Stat, §60.10 and §61.34, its authority under §66.0415 and §66.0441, 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.

Section 1.02 Applicability and Scope. As used in this Ordinance, the term chapter refers to this Town of Rutland Nonmetallic Mining Ordinance.

(1) This chapter shall apply to all nonmetallic mining operations and mine sites within the Town except as set forth in sub. (2), and as otherwise prohibited by law, including Wis. Stat §66.0441.

(2) This chapter shall not apply to the following nonmetallic mining operations:

(a) Excavations or grading by a person solely for domestic or farm purposes.

(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 one acre of total affected acreage occurs over the life of the mine.

(f) Removal from the earth products or commodities that contain only minor or incidental amounts nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

(3) A requirement under a license issued under this chapter shall not apply if that requirement is specifically regulated by Dane County Zoning ordinances or if that requirement is specifically regulated

through a previously issued and effective Conditional Use Permit to the applicable Mine Site, but all other requirements of the license shall continue to apply.

Section 1.03 Definitions

- (1) "Adjoining land" means any property within ½ mile of a mine site or proposed mine site regardless of whether there is a residence or structure on the property.
- (2) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.
- (3) "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 or screening facilities, dry-processing facilities, facilities for the loading and unloading of sand or gravel to and from trucks or rail cars, and private roads or haulage ways associated with nonmetallic mining operation, and all contiguous lands to the nonmetallic mining operation under ownership or control of the owner or operator.
- (4) "Mining license" or "license" means a license permitting nonmetallic mining operations issued pursuant to this chapter.
- (5) "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring organic or inorganic nonmetallic material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat and talc.
- (6) "Nonmetallic mining" means any or all of the following:
 - (a) Extraction from the earth of mineral aggregates or nonmetallic minerals for offsite use or sale, including drilling and blasting as well as associated activities such as excavation and grading of such materials.
 - (b) Manufacturing or processing operations that may involve the use of equipment for the crushing, screening, separation, 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 for 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.
- (7) "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.
- (8) "Town" means the Town of Rutland.
- (9) "Town Board" means the Town Board of the Town.
- (10) "Waste material" means a 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.

Section 1.04 License required.

(1) License Requirement. No person shall conduct nonmetallic mining within the scope of this chapter in the Town without first obtaining a mining license from the Town Board.

(2) License Term

(a) The license term shall be five years, commencing on the date the license is issued.

(b) A mining license may be renewed as set forth in §1.08.

(3) License Transfer. A mining license may be transferred to a new operator with the permission of the Town Board, provided that the new operator provides financial assurances and other information as may be required by the Town, County, or State, and provided that the operational plan as submitted at the time of granting the license being transferred remains unchanged.

4) License Revocation and Suspension. A mining license may be suspended or revoked as provided in §1.09.

Section 1.05 Procedure for applying for a Mining License.

(1) Application Form. The application form for a mining license shall be on a form provided by the Town Clerk.

(2) Application Submittal. The applicant shall submit five (5) copies of the application form and all required documentation required under § 1.06 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this chapter in amounts set forth in the Town of Rutland Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of Rutland." The application form shall be signed by the operator and by the landowner, if different from the operator.

(3) Initial Review by the Town Board.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board 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 Town Board shall schedule the application for a hearing under sub. (4).

(b) Additional Information. The Town Board may request that the applicant submit additional information if the Town Board determines that the application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this chapter.

(c) Additional Fees. If the Town Board determines that additional expertise is required or will provide valuable assistance to the Board in its review of the application, the Town Board may retain the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The estimated additional fee shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, the applicant shall pay the additional amount within 30 days of invoicing by the Town. Any permit issued shall be conditioned upon the payment of all administrative fees when due. If the final administrative fee is less than the estimated amount, the overpayment shall be refunded to the applicant.

(d) Once the applicant has submitted any required additional information and has paid the estimated additional administrative fee, the retained expert shall report to the Town Board on whether the application meets the requirements of this chapter.

(4) Decision by the Town Board

(a) Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is warranted, the applicant shall pay the Town's cost incurred for the special meeting. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the noticed mailed to all adjoining landowners. At the public hearing, the Town Board shall take public comment on the proposed mining license.

(b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time it shall make a final decision on the mining license. If a special meeting is warranted, the applicant shall pay the Town's cost incurred for the special meeting. The Town Board shall review the retained expert's report as well as public comments made at the public meeting. The Town Board shall 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 Town Board denies the license, the applicant may request a hearing under the provisions of §1.09(3).

(c) At the time the Town Board decides to grant or deny the license, it may also decide to refund a portion of the base administrative fee if the time and/or expenses involved in reviewing the application were less than expected.

Section 1.06 License Application

All applications for a mining license shall include 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.

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

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

(2) Site Information and Maps.

(a) A plat of survey or certified survey map(s) and parcel identification number(s) of the property on which the nonmetallic mining operation will be located.

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

(c) A topographic map of the mine site extending $\frac{1}{2}$ mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one mile of the site.

(d) A scale drawing of the location within the site of all existing buildings and other structures and, if the operation includes frac sand mining, the location of all stockpiles and storage facilities.

(e) A map on which all residential, agricultural and municipal wells within $\frac{1}{2}$ mile of the boundaries of the site in all directions are marked and given a numerical identification of the location.

(f) 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 flow features on the site and within $\frac{1}{2}$ mile of the site. If the gradient of groundwater flow is in the direction of a

stream, the applicant must supply data establishing the baseline flow of the stream at the time of license application.

(g) A description of the distribution, depth and type of topsoil on the site as well as the geological composition and depth and width of the nonmetallic deposit.

(h) A map identifying the location of all other non-contiguous sites within the Town and adjacent Towns, if any, that will contribute material to the facility for which the applicant seeks a license.

(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) Location of road access points to be used in the operation.

(d) 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 and the size of truck to be used to transport the nonmetallic materials, unless the operator has entered into a separate agreement with the Town providing for the designation of trucking routes and reimbursement to the Town for damage and increased maintenance costs.

(e) A water budget, including an estimate of the amount of daily water use, water sources, and the methods for disposing of water including methods used for infiltration and control of run-off.

(f) 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.

(g) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust. The operator shall select products that limit the potential for groundwater or surface water pollution, as may be identified on recognized product lists available from Wisconsin DNR EPA, or other agencies.

(h) Contiguous properties. For contiguous properties under common ownership or control of the applicant owner or operator, a timetable and plan indicating the anticipated nonmetallic mining operation expected to be undertaken at such properties.

(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 §1.07.

(b) 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 within ½ mile of the site.

(5) Special exceptions. The Town Board may grant special exemption from one or more of the specific application requirements of this section if the Board finds that the information required 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.

Section 1.07 Minimum Standards of Operation.

The Town Board shall grant a mining license if the applicant demonstrates 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 appropriate measures.
- (b) The operator shall demonstrate compliance with all of the other provisions of this chapter.
- (c) The operator shall comply with applicable blasting regulations.
- (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 promptly provide notice to the Town of any notices of violation, citations, compliance or remediation orders, or other enforcement actions taken by any other governmental body against or relating to the mining operation.
- (f) The minimum set-back for mining operations shall be 100 feet from property lines, and 133 feet from the center of Town roads, and all other public roadways, except that the property line setback shall not apply to any existing operation operating under a conditional use permit issued by Dane County during the current term of that permit. These setbacks must be vegetated to help prevent runoff from mine operations, and shall include berms, berm maintenance areas, and any setbacks required by the County in its conditional use permit or reclamation plan. A set-back of 500 feet shall be maintained between the mining operation and any residence not occupied by the licensee or a person who has sold or leased any lands to the licensee for mining. Prior to commencement of mining operations, berms shall be installed of a height of at least 10 feet in height around the area of mining operations, along with suitable grass, trees and erosion control improvements on and around the berm areas.
- (g) Not more than 25 acres shall be disturbed or mined at any one time, and land shall be reclaimed as new land is disturbed or mined.

(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 NR 216 and NR 151 as applicable.
- (b) In the event that the mine site is adjacent to any lands being used for agricultural, commercial or residential purposes, the operator shall undertake all measures to prevent surface water runoff from those areas from entering mining operations.
- (c) The operator shall screen the mining operations from public view, for aesthetic and noise and dust control purposes, to the maximum extent practicable through the use of berms, additional setbacks or other measures.
- (d) The hours of operation for any non-metallic mine in the Town shall be from 8 A.M. to 5 P.M. Monday through Friday, No operations of any kind shall take place on Saturday, Sundays or legal holidays. Under no circumstances, including §1.13 agreements, shall there be 24 hour per day or 7 days per week operations. However, the restriction on the days and hours of operation shall not apply if the materials produced at the mine site will be used in a public works project that required construction work to be performed during the night or an emergency repair.
- (e) Unless operations are authorized at night, the operator shall limit night lighting on site, to that which is minimally necessary for security. Every effort consistent with the legal requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum such measures shall include the following:

1. The use of full cutoff shrouds on all lights.
2. Portable lighting shall be used only as necessary to illuminate temporary work areas.
3. The use of berms of sufficient height coupled with other methods of visual screening to block light from neighboring properties.
4. The design and location of access roads to minimize lights from traffic and operations to neighboring properties.

(f) The operator shall control off-site noise levels to the maximum extent practicable. The noise levels at the boundaries of the mining or processing site shall not exceed 65dBA, except for intermittent noise caused by individual explosive blasts lawfully conducted. The use of compression release engine brakes, commonly known as "jake brakes," is prohibited where posted by the Town Board, except in cases of emergency. Only OSHA approved backup noise that is a "swishing noise" will be allowed instead of the backup beeping.

(g) Air monitors.

1. The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code NR415.075. 2. If the mining operation includes a frac sand processing plant, the following provisions shall apply:

- a. The operator shall monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM2.5) or less and Total Suspended Particulates (TSP) as measured by a method approved in writing by the Town. The type and number of monitors needed, the location of the monitors, and the frequency and duration of the monitoring program shall be determined as part of the license approval, but all costs associated with monitoring shall be borne by the operator.
- b. If the air monitors show an exceedance of 35 micrograms per cubic meter of PM2.5 in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize PM2.5 emissions.
- c. If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize TSP.
- d. The operator shall provide the Town with a quarterly summary of monitoring results within 10 days of the end of each calendar quarter and all individual monitoring reports shall be provided upon request.

(h) In order to minimize the emission of dust at an off-site facility, stockpiling of frac sand product shall be fully enclosed in a structure.

(i) The operator shall provide truck routes, that shall be approved by the Board, and shall have these routes be different so that no one road or residences get all or most of the truck traffic.

(j) Blasting. In this paragraph, "affected area" means an area within a certain radius of a blasting site that may be affected by a blasting operation, as determined using a formula established by the department of safety and professional services by rule that takes into account a scaled-distance factor and the weight of explosives to be used. With respect to blasting, the operator shall comply with the following:

1. Before beginning a blasting operation at the mine site, provide notice of the blasting operation to the Town and to owners of dwellings or other structures within the affected area.
2. Before beginning a blasting operation at the mine site, cause a 3rd party to conduct a building survey of any dwellings or other structures within the affected area.

3. Before beginning a blasting operation at the mine site, cause a 3rd party to conduct a survey of and test any wells within the affected area.

4. Before beginning a blasting operation at the mine site, provide evidence of insurance to the Town, in a reasonable amount approved by the Town, providing suitable coverage for the blasting operations.

5. Provide copies of blasting logs to the Town after each day of blasting.

6. Provide maps of the affected area to the Town.

7. Provide copies of any reports submitted to the department of safety and professional services relating to blasting at the Mine Site to the Town.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to groundwater Quality.

1. Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Adm.in. Code Ch. NR 140.

2. No nonmetallic minerals shall be extracted below a depth that is 30' above the groundwater table.

3. The operator shall remedy any ground-water contamination caused by the mine operation within ½ mile of the mining site at the operator's sole expense.

(b) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within ½ mile of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(4) Hazardous Materials.

(a) All hazardous chemicals shall be stored, used and disposed of in accordance with applicable state and federal laws and regulations.

b) The operator shall not dispose of waste materials or residuals containing any hazardous chemicals on site or in any other location within the Town other than in a properly licensed landfill or through land spreading in a manner approved by the Wisconsin Department of Natural Resources.

(c) The operator shall file with the Town a written plan for responding to spills of any hazardous materials on the site.

(5) Special Exceptions.

(a) The Town Board may grant a special exception from any standards contained in this section if it finds that the intent of this chapter can be achieved through the use of alternative measures and that the public health, safety, and welfare will not be adversely affected thereby.

(b) The Town Board may impose requirements in addition to or exceeding the minimum standards of this section if it has evidence that the public health, safety, and welfare will not be adequately protected without the imposition of additional measures.

Section 1.08 Annual Report and License Renewal.

(1) Annual Report.

(a) No later than February 1 of each calendar year, the operator shall submit an annual report to the Town Board for all active and intermittent mining sites for which the operator has a license in the Town.

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

1. An identification of the operator and location of the mining site.
2. A map or drawing accurately showing the area of excavation, the unclaimed area and any reclaimed area including a calculation of the number of acres for each type.
3. A description of all activities and operations occurring on the site during the previous calendar year.
4. A description of activities and operations on the site anticipated for the following calendar year.
5. 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.
6. A summary of all areas of non-compliance, and a plan for bringing noncompliant areas into compliance.

(2) License Renewal

(a) The operator shall make written request to the Town Clerk for a renewal of the license to operate the mine no later than 60 days prior to the expiration of the license. 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 of Rutland Schedule of Fees and Forfeitures.

(b) The Town 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 Town Board.

(c) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town may retain an engineer or other qualified person to provide technical evaluation and advice, and/or to inspect the mine site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under par (f).

(d) Additional fees. If the Town Board determines it necessary to hire an engineer or other qualified person under par. (c), 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 of additional review by the retained expert. The additional fee shall be paid before the additional review is undertaken.

(e) 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 Town Board on whether the renewal application meets the requirements of this chapter. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to expiration of the license.

(f) The Town Board shall grant the request for renewal if it finds:

1. there have been no material violations of this chapter or the license which have not been appropriately remedied, and
2. the operator has not received multiple or recurring citations or orders for violations of the operator's license or this chapter.
3. All applicable fees have been paid and financial responsibility requirements have been met.

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

(h) At the time the Town Board decides to grant or deny the license, it may also decide to refund a portion of the base administrative fee if the time and/or expenses involved in reviewing the application were less than expected.⁵

Section 1.09 Inspection, Enforcement, Procedures and Penalties.

(1) The Town Board or other authorized representative of the Town may make inspections 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, and reasonable notice. No licensee shall deny access for, or hinder or obstruct, such inspections or impose any restrictions or conditions other than safety requirements mandated by state or federal regulation. The inspector shall announce his/her arrival at the mine site to the mine operator and shall be, or accompanied by, an experienced miner.

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

(a) Engaging in metallic mining without a mining license granted by the Town Board.

(b) Failure to comply with the minimum standards and other terms 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 §1.08.

(e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under §1.10 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 Town Board, provided such person shall file with the Town 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 within 30 days after denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing the Town Board and shall give the petitioner written notice thereof.

(b) After the hearing, the Town Board by a majority vote, shall sustain, modify or withdraw the notice under sub. (4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this chapter have been complied with, and the petitioner shall be notified within ten days in writing of such findings.

(c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(4) Remedies. The Town 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 and specifies the date on which the remediation must be completed.

(c) Issue a citation.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (5) or appropriate 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 Board may suspend or revoke a mining license for a violation under sub. (1). A mining license may be revoked if the Town finds that mining operations have been abandoned.

(a) An operation may be considered "abandoned" if no significant mining operation has occurred for more than 180 consecutive days.

(b) Prior to suspension or revocation of a mining license, the Town Board shall provide notice to the licensee of the proposed action and the grounds therefor, and offer the licensee the opportunity to request a hearing on the matter before the Town. The licensee shall be entitled to a hearing only if, within 30 days of the Town Clerk's mailing of the registered notice of intent to revoke, the licensee provides a written request for the hearing and includes a statement of the licensee's position as to the stated grounds for the proposed action. If the Town receives no such request within the 30 day period, the Town Board may suspend or revoke the license without a hearing.

(c) Upon receipt of a request for a hearing with the requisite information, a hearing shall be scheduled. After the hearing, the procedures stated in §1.09(3)(b) and (c) shall apply.

(d) A restart of the operation after revocation or during a suspension of the mining license is a violation of this chapter and subject to the penalties as provided in this chapter.

(e) The Town Clerk shall inform the Dane County Zoning Administrator of a finding of abandonment and request that the County order reclamation to begin.

(f) Upon suspension or revocation of a mining license, all nonmetallic mining activities on the licensed site shall immediately cease, except for actions necessary to implement a reclamation plan approved by Dane County or authorized by the Town Board.

(6) Penalties

(a) Any person or entity who shall violate any provision of this chapter, or who shall undertake any activity in violation of a stop work order, shall pay a forfeiture of not less than \$250 nor more than \$5000 for each violation and/or be subject to injunctive relief. In the case of a continuing violation, each day the violation continues shall be a separate offense.

(b) Any person or entity found to have violated any provision of this chapter shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

(7) No failure or delay by the Town in taking any action on any violation(s) shall be deemed a waiver of the Town's right to take action on the same or any other violation(s).

Section 1.10. 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 100% of the cost of repair and extraordinary 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 ½ mile of the site or such other area shown to be impacted by the operator's operations.

(2) Financial assurance shall be provided to the Town in the form of cash deposits, irrevocable letters of credit or other measures agreed upon by the Town 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.

Section 1.11 Damages to private Water Supply

(1) A property owner within $\frac{1}{2}$ mile of the mine site may seek remedies under subsections (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 flows for more than 5 days.

(2) Any property owner seeking a remedy under sub (1) 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 §1.10 to provide an adequate interim water supply. The Town shall also use funds under §1.10 to indemnify the Town for any claims filed under Wis. Stats. §281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).

(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 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 shall have the right to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year. By making a claim under subs. (1) or (6) and accepting funds or benefits under sub. (2), the property owner shall be deemed to have agreed to make any reimbursement required under this subsection.

(6) A property owner beyond $\frac{1}{2}$ mile of the mine site may apply to the Town for use of funds under §1.10 to remedy damages to a private water supply, provided that the property owner can demonstrate to the Town that the damages to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, subs. (2)-(5) shall apply to the owner's claim.

(7) Any existing well within 500 feet of the property line of the mining operation that becomes out of compliance with Wis. Admin. Code §NR812.12(16) due to the depth of the mining operation shall immediately be eligible for re-drilling at sole expense of the licensee. The owner of any well within 500 feet of the mining operation that fails and requires re-drilling, or any new well subject to additional installation expenses under Wis. Admin. Code §NR812.12(16) shall be entitled to have the cost of such work reimbursed by the licensee. The determination as to whether any existing well has "failed" or "becomes out of compliance" so as to require re-drilling or replacement shall be made by a well specialist chosen by the Town and be based on all applicable governmental laws, rules, regulations, orders, codes and

ordinances, the cost of which determination shall be borne solely by the licensee. The determination of whether any failed well is subject to the requirements of NR812.12(16) shall be made by the Wis. DNR in the event of any dispute between the property owner and the licensee. This subsection (7) is subject to all of the following:

- (a) The failed well or proposed well is subject to the requirements of NR 812.12(16) Wis. Admin. Code.
 - (b) The property upon which the failed well exists does not have municipal water service available.
 - (c) Any proposed new well must be necessary to replace any failed existing well which cannot be re-drilled or to serve a principal building to be used for human habitation, including residential, commercial, industrial or institutional buildings, provided construction of same has progressed at least through foundation installation as of the effective date of this chapter.
 - (d) The well re-drilling or drilling shall be made in compliance with all applicable governmental laws, rules, regulations, orders, codes and ordinances, including any necessary licensure of those performing such work.
- (8) Between 500 feet and $\frac{1}{4}$ mile from the mine, any well whose casing depth is brought to less than 60 feet below the depth of the mine due to lowering of the mine floor shall have any additional cost of a necessary re-drill borne solely by the licensee.

Section 1.12 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 or circumstance is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land or other circumstances not specifically included in said judgment.

(2) The provisions of this chapter and any license approved, or mining agreement entered into, under this chapter, 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 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.

Section 1.13 Mining agreement.

(1) Purpose. This section provides a procedure for modifying provisions of this chapter in a voluntary mining agreement between the Town and the mine operator where necessary to adapt some provision to the special circumstances of the mining operation for which license application is being made, and where the agreement provides protections for the public at least equal to the protections of this chapter.

(2) In exchange for greater flexibility that adapting the regulations and standards of this chapter to circumstances that are unique to the proposed mining operation, a Mining Agreement may require additional or different standards, requirements, levels of review, monitoring and compliance mechanisms and measures to mitigate or compensate for impacts as determined in the sole discretion of the Town Board.

(3) Application for a Mining Agreement

(a) The application requirements, approval requirements, and procedures in §1.05 apply to an application for approval of a mining agreement, except that the standard for granting the application is set forth in (4).

(b) The application shall include all of the information and other materials required in §1.06.

(c) The application shall describe all ways in which the proposed mining agreement will deviate from the otherwise applicable regulations in this chapter, including but not limited to the term of the approval, the process for inspection and review of operations, and the minimum standards of operation.

(d) The application shall provide a written justification for any proposed deviations from the otherwise applicable regulations in this chapter which may include provisions to minimize, mitigate or compensate for potential impacts to public health, safety and welfare including impacts to property value.

(4) Decision by the Town Board.

(a) The Town Board shall review the application in accordance with the procedures for review of a mining operator's license application, and may review any retained experts' reports, and public comments made and information provided at the public hearing, and any other information the Town Board deems appropriate. The Town Board may, in its sole discretion, approve the mining agreement in the exercise of its police powers.

(b) If the mining agreement is approved, all standards and regulations in this chapter that are not expressly modified in such approval shall continue to apply to the licensee's operations.