

**TOWN OF PEPIN**  
**PEPIN COUNTY, WISCONSIN**  
**ORDINANCE 2012 - 7.6**  
**NONMETALLIC MINE OPERATOR'S LICENSE**

**Section 1: Findings, Purpose, Standards, and Authority**

(1) **Findings:** While nonmetallic mining is a legitimate and permissible part of our state and local economy, large scale mining and processing, particularly for 'frac sand', can adversely affect the environment, public health, safety and well-being of Town residents, landowners and the public. The activities, processes and chemicals used in nonmetallic mining operations can have adverse effects on groundwater and surface water quality and quantity, including soil erosion when changed terrain is not managed in a way that mitigates soil damage from movement of surface water. Nonmetallic mining operations can have negative impacts on the landscape and the scenic beauty valued by residents and visitors to the Town of Pepin when a mine site is not properly screened or reclaimed, and can present safety concerns to members of the public when not properly secured. Truck traffic generated by nonmetallic mining operations can damage public roads and lead to off-site adverse effects on the safety and well-being of Town children and adult residents and landowners and visitors. Property values may be adversely affected by non-metallic mining operations. Other potential impacts from nonmetallic mining and processing include logging on bluffs and hilltops, excavation of sandstone ridges, loss of agricultural land, equipment noise, exposure to respirable silica dust, excessive groundwater use and additional potential sources of surface and ground water contamination.

Without proper regulation, large scale nonmetallic mining will have a negative impact on current economic activities and jobs in agriculture, tourism and recreation, and the goals for economic development of the Town as described in our Comprehensive Plan:

- ***Maintain the rural character of the Town of Pepin in the development of new business and the growth and retention of existing businesses.***
- ***Encourage industrial and commercial business growth in selected areas to minimize impact on agricultural land.***
- ***Protect natural resources and minimize negative impacts on the natural beauty of the Lake Pepin area and the bluffs in new developments for business, recreation and housing.***

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

residents, especially Town landowners and residents in close proximity to nonmetallic mining operations and transport routes.

**(2) Purpose:** This Ordinance is enacted to establish minimum local standards for all nonmetallic mining operations in the Town in order to protect public health, safety and prosperity, preserve the scenic beauty, balance and aesthetics of the Town's landscapes and environment, preserve and protect the quantity and quality of local ground and surface waters, avoid or minimize adverse effects on Town residents, taxpayers and the environment from the effects of nonmetallic mining operations, and to otherwise protect the safety and welfare of the people and communities in the Town of Pepin ("Town").

**(3) Standards:** Because the Town of Pepin is uniquely located on the shores of Lake Pepin, the boundary of the Tiffany Wildlife area and the banks of the Chippewa River, large scale nonmetallic mining within the boundaries of the Town should be limited to protect the character and resources of the Town as described in our comprehensive plan. Therefore these limitations apply to all applicants for a nonmetallic license and any developers' agreement:

- (a) Applicants for a nonmetallic mining license within the Town of Pepin must continually comply with all existing federal, state, and county regulations.
- (b) No nonmetallic mining site shall be permitted larger than 20 acres in total area excluding required buffers and set backs
- (c) No more than two new nonmetallic mining sites greater than 10 acres shall be permitted within the Town.
- (d) No washing or other processing facilities shall be permitted within the Town.
- (e) No rail or barge loading facilities shall be permitted within the Township.
- (f) No tunneling or underground mining shall be permitted within the Town.
- (g) No nonmetallic mining sites shall be permitted within an area within one half mile of existing wetlands, shorelines or steams within the Town.
- (h) Minimum operating standards and conditions for permitted nonmetallic mining operations are described in Section 7 of this document.

**(4) Authority.** This Ordinance is adopted pursuant to Town authority under Wis. Stats. §§60.10, 60.22, 61.34, 66.0415, and other authority available under state statutes. The amendment, repeal or recreation of any statute affecting or related to this Ordinance and made after the effective date of this Ordinance is incorporated herein by reference as of the effective date of the amendment, repeal or recreation.

## **Section 2. Applicability**

**(1)** This Ordinance shall apply to all nonmetallic mining operations in the Town except those described below, in sub. (2).

**(2)** This Ordinance does not apply to the following nonmetallic mining operations:

- (a) Traditional quarries and pits operating with a current Pepin County nonmetallic mining reclamation permit as of the date of adoption of this Ordinance are exempt from the licensing requirements of this Ordinance so long as there is no change in scale, scope or type of operation.
- (b) Excavation or grading solely for domestic or farm use at a person's residence or farm.
- (c) Excavation or grading for the construction, reconstruction, maintenance or repair of a public highway, railroad, or other transportation facility where the area in which excavation or grading conducted is located entirely within the boundaries of the highway right of way or is owned by the railroad or other transportation facility.
- (d) Grading to prepare a reconstruction site or to restore land after a flood or natural disaster.
- (e) Excavation for building construction purposes located and conducted entirely on the building site.
- (f) Nonmetallic mining at any site where no more than five acres will be actively mined at any time during the life of the mine.
- (g) Removal from the earth of products or commodities for non-mining purposes that contain minor or incidental amounts of nonmetallic minerals. Examples include production of commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees or plant nursery stock.

**(3)** All persons or business entities who intend to engage in nonmetallic mining in the Town shall either apply for a license or provide information to the Town to establish an applicable exemption under this Ordinance. An entity or person that is exempted from application of the Ordinance under Sections 2(2) and then changes its nonmetallic mining operation so that it no longer qualifies for the exemption shall immediately apply for an Operator's license.

**(4)** An exemption from the requirements of this Ordinance does not prevent the Town from requiring the Operator of the exempt nonmetallic mining operation to enter into a highway use agreement under Wis. Stats 349.16 or other authority available to the Town. Any exempted operation must comply with the requirements for Access and Observation described in Section 9 (1) of this Ordinance.

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

**(1)** "Nonmetallic minerals" means a product, commodity or material consisting principally of naturally occurring organic or inorganic non-metallic material including but not limited to mineral aggregates or nonmetallic minerals including stone, sand, silica sand, gravel, asbestos, beryl, diamond, clay, feldspar, peat, talc and topsoil.

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

- (a) Constructing any buildings or storage sheds for the purposes of mining operations.
- (b) Removing and/or relocating Topsoil or Overburden for the purpose of Nonmetallic Mining.
- (c) Operations or activities at a nonmetallic mining site for extraction from the earth of mineral aggregates or nonmetallic minerals for off-site use or sale. This includes the use of mining equipment or techniques to remove nonmetallic minerals from the in-ground deposit, including drilling, blasting, excavation, grading, dredging, scalping and dewatering.
- (d) Manufacturing or processing operations carried out at the nonmetallic mine site or elsewhere that involves the use of machinery or equipment and where the operations include the crushing, screening, or blending of mineral aggregates or nonmetallic minerals obtained by extraction from a mining site or brought to the operation from off-site.
- (e) Manufacturing processes aimed at producing nonmetallic mineral products for sale or use by the Operator including but not limited to blasting, grading, crushing, screening, scalping and dewatering.
- (f) Stockpiling of nonmetallic mineral products for processing, sale or use off-site; also stockpiling of nonmetallic mining waste material.
- (g) Transport of extracted nonmetallic minerals, finished products or waste material to or from a nonmetallic mining, manufacturing or processing site.
- (h) Disposal of nonmetallic waste material.
- (i) Reclamation of the extraction site.

**(3)** "Nonmetallic mining waste material" means the non-marketable waste soil, rock, mineral, sand and other natural material that results directly from the Operator's licensed nonmetallic mining, and that is designated for disposal at the Operator's designated nonmetallic mining site, or elsewhere when part of the Operator's reclamation plan.

**(4)** "Nonmetallic mining site", "mine", "site" or "mine site" means the land from which the Operator will extract mineral aggregates or nonmetallic minerals for sale or use, and also includes the land on which is or will be located stockpiles, berms, required buffers, haul roads, washing or screening facilities. A nonmetallic mining site also includes storage and processing facilities; areas where nonmetallic mining

waste material is deposited; areas affected by nonmetallic mining activities such as private roads or haulage ways; areas where grading or re-grading is necessary pursuant to nonmetallic mining or reclamation; and areas where reclamation activities are carried out such as topsoil stockpiling areas, re-vegetation test plots or channels for surface water diversion are located. Contiguous processing or stockpiling (as for transport) areas are also considered nonmetallic mining sites under this Ordinance.

**(5)** "Adjoining landowner" means a person or entity who is a landowner as to land located within one mile of a proposed nonmetallic mining site and not a part of the area for which an Operator's license is being sought, regardless of whether there is a residence or structure on the land and regardless of whether the land is contiguous to the nonmetallic mining site.

**(6)** "Landowner" means one who holds title to land in fee simple or as purchaser on a land contract.

**(7)** "Operator" means all persons or entities who engage in nonmetallic mining in the Town under a Town license or an applicant for a Town license to engage in nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors, or subcontractors.

**(8)** "Operator's license" or "license" means the license issued by the Town authorizing nonmetallic mining Operators to conduct nonmetallic mining activities in the Town and required to conduct such activities in the Town.

**(8)** "Developer's Agreement" means a signed contract agreement between the Town Board and a licensed nonmetallic mining Operator following the issuance of an Operator's License that guarantees observation of the terms and conditions of the license and any specific terms and exceptions determined and agreed to by the Town Board.

**(10)** "Town" means the Town of Pepin and/or the Town Board of the Town of Pepin, the Town Chair or any other authorized representative of the Town.

## Section 4. Operator's License

(1) License Requirement. Nonmetallic mining is allowed in the Town only as provided for in this Ordinance. No person or entity shall start work on any nonmetallic mine site, mining structure or facility or operate a nonmetallic mine in the Town of Pepin without first obtaining an Operator's license from the Town, or establishing qualification for exemption under the Ordinance.

(2) License Term

(a) Except for the first year of operation under this Ordinance, 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 Ordinance, the Operator's license will extend from the date of issuance until the first June 30th after 12 months of operations have been completed.

(b) An Operator's license is renewable under the procedure in Section 8, except that a temporary Operator's license may not be renewed.

(3) License Amendment. An Operator seeking to expand or otherwise change its licensed operation during the license term shall seek an amendment to its Operator's license by following the same process as for an initial license application.

(4) License Transfer. Licenses are not transferable without the prior written approval of the Town Board. The Town shall approve license transfer by an Operator in good standing with respect to the requirements of this Ordinance during the license term after a proposed transferee Operator first demonstrates that it meets all Town license requirements; that the proposed transferee Operator will continue to meet all County, State and Federal laws and regulations that apply to it; that the proposed transferee Operator is an individual or entity properly formed and authorized to do business in Wisconsin; a written assignment is presented that requires and obligates the proposed transferee Operator to assume each and every obligation of the licensed Operator and to which the proposed transferee Operator has agreed; the Town determines that proposed transferee Operator is of comparable creditworthiness to the licensed Operator; that the proposed transferee Operator has obtained the transfer of any Pepin County Reclamation Permit required to assume the operation; the proposed transferee Operator has posted the full financial security required by the County Reclamation Permit; that the proposed transferee Operator has assumed each and every responsibility under any Town or County Road Agreement related to the nonmetallic mining operation and posted the full financial security required under any such Road Agreement; and the transfer is approved by the Town Board, after a public hearing preceded by not less than thirty (30) days notification of the proposed transfer to adjoining landowners from the proposed new Operator.

**(5) License Revocation.** Operator's licenses are revocable by the Town in the manner set forth in Section 9 of this Ordinance.

**(6) Temporary License.** Operators engaged in nonmetallic mining on the effective date of this Ordinance have a temporary initial Operator's license for the size and extent of the nonmetallic mining operation on that date, once the Operator certifies that its nonmetallic mining operation will comply with the minimum standards in Section 7 during the term of the temporary license and submits a complete license application to the Town within sixty (60) days of the effective date of this Ordinance.

**(7) Registration License.** New nonmetallic mining operations that meet all of the following criteria but are not qualified for an exemption under the terms in section 2(2) may apply for a registration license under Section 7 (7) in lieu of an Operator's license:

(a) Less than five (5) acres of actively mined acreage will be occupied by the nonmetallic mining operation during the life of the operation.

(b) The nonmetallic mining operation will not involve the washing or processing of nonmetallic minerals brought in from off-site or of nonmetallic minerals mined on-site.

(c) The nonmetallic mining operation will not remove nonmetallic minerals or excavate below the point one hundred (100) feet above the groundwater table.

(d) No settling agents, chemical additives or treatment of nonmetallic minerals will be employed on-site in the nonmetallic mining operations or stored on-site.

(e) No area of existing woodlands, or slopes greater than 3:1 when measured horizontally for a distance of not more than fifty (50) nor less than twenty-five (25) feet, will be occupied or adversely affected by the nonmetallic mining being proposed for the registration license.

## **Section 5. License Application Procedure**

**(1) Application.** Applications for nonmetallic mining Operator's and registration licenses shall be filed in the office of the Town Clerk. Applications shall provide all information and materials required by this Ordinance.

(a) Administrative Fee Deposit. Maintaining an adequate administrative fee deposit at all times is a condition of maintaining an application and a license. Amounts so deposited shall be held by the Town and used to pay for its application review, for oversight and monitoring by state agencies as requested by the Town when municipal payment is expected or required for state agency assistance, for ongoing Town administration and enforcement, retained experts and legal fees associated with the evaluation of the application at issue and the administration, enforcement, renewal or revocation of any license issued by the Town. Applicants and license holders shall replace depleted administrative fee deposits within fourteen (14) days of being notified to do so by the Town. The Town shall provide an applicant or license holder with an annual accounting for Town use of administrative fee deposits related to its application or license.

**(2) Application Submittal.** Applicants shall provide the Town Clerk with the original plus ten (10) copies of the application and all required supplemental documentation, an electronic/digital set of all application materials, the application fee and the initial administrative fee deposit in the amounts established by the Town Board. Applications shall be signed by all persons or entities seeking licensure as Operator, by all owners of the location on which nonmetallic mining is proposed to take place, and certified as true and correct by the applicant. The Town may periodically review and revise the amounts required for the application fee and initial administrative fee deposit. The Town's objective is that application review and license administration shall be fully funded by license applicants and Operators.

**(3) Application Review.**

(a) Preliminary Review. The Town Clerk shall preliminarily review an application for completeness and forward the application to the Town Plan Commission to determine whether additional information or expertise is necessary or will be of assistance to the Town Board as it reviews the application.

(b) Additional Information. At any time during the application process that the Town determines that an application is incomplete or that additional information will be of assistance the applicant shall submit the requested additional information before further proceedings take place. The Town shall retain qualified person(s) with appropriate expertise ("retained experts") as the Town deems prudent to review the application, to determine whether additional information is necessary or will be of assistance, to assist the Town in deciding whether the nonmetallic mining operation for which application is being made will



meet the standards of this Ordinance, to assist the Town in evaluating any special exception requests, and to assist the Town in administering and enforcing the Ordinance. All expenses and fees required for application review by the Town or its retained experts shall be paid from the administrative fees provided by the applicant.

**(4) Public Hearing and Decision.**

(a) Hearing Notice. When an application has been deemed initially complete and all retained expert reports have been delivered to the Town, the Town Clerk shall place the nonmetallic mining Operator's license application on the next regular agenda for public hearing and action. If a special Town Board meeting is convened for this purpose, the applicant shall pay the cost of such special meeting. The Town Clerk shall give thirty (30) days public notice of the application and public hearing and separately mail hearing notices to each adjoining landowner and to each landowner with property adjoining any proposed primary or alternative transport routes.

(b) Town Board Decision. Public comment on the application may be filed before and at the public hearing. The applicant may provide additional information. When additional information is provided, written public comment may be submitted for a minimum of 60 days after the applicant provides the additional information. After the hearing the Town Board may take immediate action or set a date for a later meeting at which the Town Board shall make a final decision on the nonmetallic mining Operator's license application. If a later special meeting is convened for such purpose, the applicant shall pay the cost of the special meeting. The Town Board shall consider the retained expert reports as well as information and public comments received, and may request, receive and consider additional retained expert reports to address issues raised by the public. The Town Board's decision under this Ordinance shall be based upon its determination of whether the nonmetallic mining operation will be conducted in conformity with the requirements of this Ordinance or, in the case of a registration license, with all applicable minimum standards. The Town Board shall grant a nonmetallic mining Operator's license if it determines that the applicant has established that it will operate the nonmetallic mining operation that is the subject of the application before it in compliance with the criteria established in this ordinance to protect the health, safety and well being of the public and with the goals and objectives established and maintained in the Town's Comprehensive Plan.

(c) If the Town Board denies an application for license, the Town Board shall notify the Applicant of the denial and the stated grounds for denial, in writing. The Applicant shall have fifteen (15) days from receipt of notification to request a public hearing, provide additional information and request that the Town Board reconsider its denial.

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

All applications for a nonmetallic mining Operator's license shall provide the following information. Additional information may be required when identified by the Town's retained expert as necessary or useful to fully evaluate the operation for which license application is being made.

### **(1) Ownership Information.**

- (a) The name, address, phone number(s), and e-mail address of all proposed Operator(s) of the nonmetallic mining operation for which application is being made.
- (b) The name, address, phone number(s), and e-mail address of all owners, lessors, lessees, mortgagees, mineral rights owners, and holders of any interest in all land in the nonmetallic mining site where the applicant will exercise the license for which application is being made, holders of any financial interest in the mining operation, location and Operator of the processing facility or transportation depot to which the nonmetallic minerals will be sent and the owner/Operator of such facility or depot.
- (c) When any portion of the proposed nonmetallic mining site is subject to an easement, lease or other agreement, a fully executed copy of each such document affecting the proposed nonmetallic mining operation.

### **(2) Site Information**

- (a) An ATLA land survey or certified survey map(s) with property boundaries staked every fifty (50) feet, showing the tax parcel identification number(s) of all parcels included in the applicant's proposed nonmetallic mining site and of all parcels adjoining it, signed by a registered land surveyor or professional engineer.
- (b) An aerial photo of the proposed nonmetallic mining site at a scale of one (1) inch equals two hundred (200) feet, showing the location of all existing and proposed interior roads, buildings, structures (including earthen structures), equipment, stockpile, storage and parking areas.
- (c) A topographic map of the proposed nonmetallic mining site extending a minimum of one mile, or further as determined by the Town's retained experts, beyond the site boundaries with contour intervals no greater than two (2) feet and showing the boundaries of the site, the location and full acreage of the site, the name of all roads within one mile of the site, the names and addresses of all adjoining landowners and the location of all residences in the full map area.
- (d) A map on which the location of all private residential, agricultural and municipal wells within a minimum of one mile of the site perimeter, or further as determined by the Town's retained experts, is marked, labeled as regular or high capacity and with each location given a numeric identifier.

(e) The location and names of all surface waters including lakes, private or public ponds and streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and in the area within a minimum of one mile beyond the site perimeter or further as determined by the Town's retained experts.

(f) A description of the distribution, depth and type of topsoil on the proposed nonmetallic mining site and the location, geological composition and depth of nonmetallic mineral deposits to be removed over the planned life of the mine.

(g) A map of the location of all non-contiguous nonmetallic mining sites in the Town and in any adjacent Town that will contribute extracted material to the same manufacturing, processing or transport facility as the nonmetallic mining site for which the Operator's license application is being made. This requirement will apply only if an exception to the Town's standards prohibiting mineral processing within the Towns boundaries (Section 1(3)) is granted by the Town Board under a developer's agreement.

(h) Certification that no boundary discrepancies or disputes exist, or disclosing the nature of all such discrepancies or disputes, the landowners involved and certification that all such discrepancies or disputes will be resolved at the applicant's expense prior to the issuance of the license for which application is being made.

(i) A copy of any Notice of Intent/Information Summary for Nonmetallic Mining Operations concerning any area of the nonmetallic mining site for which Operator's license application is being made under this Ordinance and that has been or will be submitted to the Wisconsin Department of Natural Resources (WI DNR) for any permits over which it has jurisdiction, the WI DNR response, and any permits issued.

(j) Baseline information from an accredited lab or testing agency approved by the Town concerning surface water baseflow, well depth and casing condition, and concerning turbidity total suspended solids, coliform bacteria levels, lead, arsenic, chlorides, nitrates, radon, acrylamides, and any other hazardous chemicals in private wells belonging to all property owners who consent and are located within a minimum of one mile of the perimeter of the site or further as determined by the Town's retained experts, with documentation concerning the manner and identity of landowners who refuse consent.

(k) Baseline information from an accredited lab or testing agency approved by the Town concerning ambient air quality and suspended particulates within 100 yards of the proposed site perimeter or further as determined by the Town's retained experts..

(l) A site specific Storm Water Pollution Prevention Plan (SWPPP) modeled on WI DNR Model SWPPP-NMM, version 4, or such more recent version as is in use by WI DNR at the time application is made and that will be implemented for the site, specifically including preparation of a site drainage map, identification of potential pollutant sources, implementation of pollutant

prevention, pollutant treatment as needed, employing and using best management practices and providing for regular and periodic visual inspections by the Town or its retained experts at intervals set by the Town.

(m) A complete report of soil borings, showing at a minimum the soil types found, depth and duration, to a depth twenty (20) feet below the lowest depth for which excavation is proposed in the license application or as noted in the County reclamation permit or permit application materials. At least one soil boring shall be provided from each twenty (20) acre portion of property in the nonmetallic mining site described in the license application.

**(3) An Operation Plan That Includes:**

(a) The anticipated commencement and cessation dates of the nonmetallic mining operation; an explanation of when the planned nonmetallic mining operation will come to an end, by what standard the end of operations will be identified. (b) A detailed description of mining methods, machinery and equipment that will be used for extraction and on-site processing of extracted nonmetallic minerals and the nature, sequence and scope of the planned operation during the full anticipated life of the nonmetallic mining operation, in detail satisfactory to the Town.

(c) Estimated volume of nonmetallic minerals that will be extracted, by calendar year, over the proposed licensing period and over the full planned life of the mine, the ownership, number and type of trucks that will be used to move mined nonmetallic minerals on and off the site and expected number of daily truck trips, correlated to the estimated volume expected to be extracted and returned to the site.

(d) Identification of all public road access points to the site, preferred and all proposed alternate truck routes, traffic impact analysis on all Town and county roads under consideration as preferred and alternate truck routes from origin to destination and all available route road agreements, planned frequency of all site-related traffic and schedule of travel over all routes used or to be used for transporting extracted nonmetallic minerals, nonmetallic mining waste material or processed products, to or from the nonmetallic mining site.

(e) A water budget that describes all ways that water will be used in the nonmetallic mining operation including, but not limited to, sources of water and all processes in which the water will be used, projected volume of daily water use, both median daily amounts and maximum daily amounts, during the proposed licensing period and the anticipated life of the nonmetallic mining operation, and methods for treating, handling and disposing of water, including but not limited to methods and plans for infiltration and control of run-off and erosion from water used on site, from storm water and from dewatering.

(f) Description of all hazardous materials that will be stored or used on-site and projected quantities, including fuel, and a description of measures that will be used to secure, store and neutralize these materials in the event of spill or accidental discharge.

(g) Description of all chemicals that will be stored or used in nonmetallic mining on-site or to control or suppress dust, and a description of measures that will be used to secure, store and neutralize these materials in the event of spill or accidental discharge.

(h) A phasing plan, consistent with the applicant's County Reclamation Permit or permit application materials, showing for each year of operation which area(s) of the site will be used for mining operations and which areas will be used for excavation, stock piling or processing, haul roads and showing area-specific SWPPD considerations for each year at issue.

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

(a) License applicants are responsible for providing all information necessary to demonstrate to the satisfaction of the Town Board that the nonmetallic mining operation for which application is being made will continuously meet or exceed all minimum operation standards in this Ordinance or as required for registration licenses under Section 7(7).

(b) For nonmetallic mining operations commencing or expanding after the effective date of this Ordinance, license applicants are also responsible for providing all information necessary to establish baseline conditions at the site before nonmetallic mining operations commence or expand, including but not limited to groundwater elevations throughout the site, groundwater quality at the site including levels of particulate matter, turbidity, chlorides, acrylamides, nitrates, lead, arsenic and any other toxic metal reasonably believed by the Town's retained experts to be present in the area or in the type of deposit from which the extraction will be made, and in the baseflow of water within a minimum of 1 mile from the perimeter of the site or a further distance determined by the Town's retained experts.

**(5) Special Exception.** A license applicant can request a special exception from any application requirement of this Ordinance when it can demonstrate to the satisfaction of the Town Board that the information being required can be provided by alternate means or is not necessary for deciding on its license application for a particular nonmetallic mining operation, and that the public health, safety and welfare will not be adversely affected thereby. The Town Board shall consider information and conclusions provided by the public, the applicant, the Town Planning Commission and the Town's retained experts in making this determination.

## **Section 7. Minimum Standards of Operation**

The Town Board shall grant or renew a nonmetallic mining Operator's license when it determines that the applicant has demonstrated that it will, and has (in the case of a license renewal), operate(d) the nonmetallic mining operation in compliance with all of the following minimum standards for its nonmetallic mining operation during the term of the license for which application is being made:

### **(1) General Operating Standards.**

- (a) The Operator and the proposed nonmetallic operation will meet or exceed all requirements of this Ordinance and has met or exceeded all requirements during any prior license term.
- (b) Surveys and blasting logs shall be provided to the Town and any adjoining landowner within forty-eight (48) hours of written request. All blasting and bumping shall be conducted strictly in compliance with Wis. Admin. Code Ch. SPS. 307 and be preceded by twenty-four (24) hours notice to adjoining landowners and any other Town resident who files written request for notification with the Operator. Blasting shall occur only between 10:00 a.m. and 3:00 p.m., except that blasting may occur after 3:00 p.m. when required for safety reasons beyond the reasonable control of the Operator if approved by the Town Board. The ground vibration requirements of SPS 307 shall apply to protect all adjoining landowners when that area is greater than the area defined by the blasting level chart in SPS 307.44 (Figure 7.44).
- (c) All other Federal, State, County and local requirements, licenses and approvals required for the nonmetallic mining operation have been or will be obtained prior to commencement of operation, filed with the Town on a continuous basis and maintained in good standing during the term of the license.
- (d) The Operator will promptly disclose to the Town every notice received of any of every violation, citation, or other enforcement action affecting or related to the site, site operations, the Operator or the site owner(s) from any other government body or agency.
- (e) The borders of the entire nonmetallic mining site are visibly marked, and the site is secured by fencing or other secure and appropriate measures.
- (f) The Operator shall maintain a written record of training all employees, suppliers, and subcontractors to the General Standards of operation. The written record shall consist of copies of this section of this Ordinance signed and dated by each employee, supplier and subcontractor.

### **(2) Standards Mitigating Off-Site Impacts.**

- (a) The Operator shall take all measures necessary to control surface water runoff from nonmetallic mining operations in a manner that will prevent pollution, erosion or deposit of sediment from the nonmetallic mining site onto adjoining landowners' properties, in off-site surface water or in groundwater, and shall also comply with all applicable standards for erosion control under Wis. Administrative Code Chapters NR 216 and NR 151 and in its Storm Water Pollution Prevention Plan (SWPPP).
- (b) The Operator shall take all measures necessary to prevent surface water runoff from any adjoining agricultural, commercial or residential area or use from coming onto the nonmetallic mining site or otherwise causing contamination of surface water and groundwater.
- (c) The Operator shall maintain buffer space in which no nonmetallic mining occurs and that is no less than one hundred (100) yards from and adjacent to all property lines and public road rights-of-way and/or no less than two hundred (200) yards from the edge of slopes on the site that are greater than 3:1, when measured horizontally for a distance of not more than fifty (50) nor less than twenty-five (25) feet. Buffer areas shall not include wetlands.
- (d) The Operator shall screen the nonmetallic mining site from public view and to abate noise or dust to the maximum extent practicable through the use of berms, additional setbacks, vegetation planting and other measures acceptable to the Town and described in the Operator's Operating Plan. The Operator shall leave intact any existing perimeter tree canopy at a mine site to preserve visual appearance and to reduce particulate matter leaving the site. Berms placed within the buffer space shall locate the bottom outside edge at least thirty (30) feet from the edge of the public road right of way. Berms shall be vegetated to prevent erosion from encroaching into the buffer area.
- (e) The Operator shall limit hours of truck travel and/or on-site equipment operation to Monday through Friday beginning at 9:00 a.m. and ending by 6:00 p.m. to minimize off-site impacts on area residents. Operators shall insure that trucks hauling nonmetallic minerals and/or nonmetallic mining waste material to and from a nonmetallic mine site shall have the loaded material completely covered by a mechanical tarp or covering device specific to the hauling truck and maintained in good condition. To control 'track out' of fugitive dust and sand, Operators shall provide trucks and other vehicles leaving the mine site with wheel wash or other appropriate facilities to control fugitive dust.
- (f) The Operator shall ensure and be able to demonstrate that trucks arriving at and leaving the nonmetallic mining site do not interfere with the safety of children being taken to or returned from school, or with safety of area residents and commuters when traffic volume related to these pre-existing uses of area roads are the greatest. The use of compression release engine brakes (Jake brakes) by the trucks used in the nonmetallic mining operation is allowed only in emergency situations. The Operator may submit a plan for extended hours as a special exception if it can demonstrate why additional hours are necessary

for the nonmetallic mining operation and shows how the additional hours are or can be consistent with the public health, safety and welfare, especially of residents near the site and hauling routes.

(g) Night lighting on the nonmetallic mining site shall be limited to what is minimally necessary for security and shall shield from illuminating off-site areas by using full cut-off shrouds on all lights. Portable lighting shall be used only where necessary to illuminate temporary work areas. Access and internal roads shall be designed to minimize light from operations and traffic from going onto neighboring properties. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky.

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

(i) Operators shall monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM<sub>2.5</sub>) and Total Suspended Particulates (TSP), measured by the method described in Appendices L and B, respectively, of 40 CFR part 50 (2011) or by a method approved by the Town in consultation with the Town's retained experts. The type and number of monitors, location, frequency and duration of the monitoring program shall be determined by the Town after consultation with its retained experts and the Operator. Air monitor results inclusive of any applicable regional background concentration and showing more than 35 micrograms of PM<sub>2.5</sub> or over 150 micrograms of TSP per cubic meter of air in a twenty-four (24) hour period shall require the Operator to evaluate and implement additional best management practices to minimize the PM<sub>2.5</sub> emissions or TSP. All costs of air monitoring and corrective measures shall be borne by the Operator. The Operator shall compile summaries of air monitoring results that shall be provided to the Town within ten days of when the test results become available to the Operator.

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

(k) Before an Operator's license is issued there must be in place fully executed road agreements between the applicant and each Town and County with jurisdiction over all roads designated as preferred or alternate routes in the applicant's Operational Plan which are located between the nonmetallic mining site, any processing plant for the nonmetallic minerals



removed from the mine site, and the state or federal highway or railroad spur or barge loading facility used to transport processed or unprocessed nonmetallic minerals out of the area.

**(3) Standards Regarding Groundwater and Surface Water.**

**a) Impact on Groundwater Quality.**

(i) Nonmetallic mining Operators shall install groundwater monitoring wells on the site to densities and in the locations recommended after review of the submitted application materials and any independent review deemed necessary by the Town Board, Town Planning Commission, or Pepin County. The Operator shall provide the required initial well baseline information and regular, periodic test results thereafter, as recommended by the Town's retained experts, of water from all private wells within a minimum of one mile of the perimeter of site or further as determined by the Town's retained experts, and of any on-site monitoring wells for levels of coliform bacteria, arsenic, total suspended solids, turbidity, chlorides, acrylamides, nitrates and any other toxic metal reasonably believed by the Town's retained experts to be present in the area, in the type of deposit from which the extraction will be made, and in the baseflow of water within one mile or more of the site. Follow-up testing shall be for substances and at frequencies determined by the Town and its retained experts after review of the baseline testing.

(ii) Nonmetallic mining operations shall not be the cause of exceeding the preventative action limits or "enforcement standard" for public health groundwater quality standards as established in Wis. Admin. Code Ch. NR 140 in any adjoining landowner's private well or in any on-site monitoring well, for those conditions and substances being monitored with the baseline and periodic testing required under this Ordinance. If test results do exceed preventative action limits in any on-site or private well, groundwater quality testing shall immediately be undertaken in an expanded area as recommended by the Town's retained experts.

(iii) Nonmetallic mining operations shall not extract nonmetallic materials to any depth below a point that is one hundred (100) feet above the groundwater table, or below a site-specific depth recommended by the Town's retained expert, after review of the application materials submitted and any independent review deemed necessary.

(iv) Nonmetallic mining waste material containing polyacrylamide flocculants may only be returned and used as fill in any area on a mine site when the flocculants used meet the same standards and maximum concentrations as flocculants used in municipal drinking water systems as determined by the Town's retained experts.

(v) Any sedimentation ponds on a nonmetallic mining site shall have concrete liners.

(b) Impact on Groundwater Quantity.

(i) Nonmetallic mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within one mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact to a private and/or high-capacity well including but not limited to the inability of the well to provide potable water on a continuous basis. Any proposal that require the installation of a high capacity well shall be reviewed by the Town's retained experts for withdrawal rates and potential effect on nearby wells and surface waters.

(c) Impact on Surface Water. Nonmetallic mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters that serve as a source of water for agricultural, recreational or municipal functions such as fire protection within one mile of the border of the nonmetallic mining site. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below baseflow levels at the beginning of nonmetallic mining operation.

(d) Mitigation of Impact of Nonmetallic Mining on Groundwater and Surface Water.

(i) When groundwater test results exceed the preventative action limits for public health groundwater quality standards as established in Wis. Admin. Code Ch. NR 140 in an adjoining landowner's private well or in any on-site monitoring well for those conditions and substances being monitored, the remedies available under Section 11 shall be provided to the affected landowner(s) or resident(s).

(ii) When adverse effects on surface waters are established to the satisfaction of the Town utilizing its retained experts, which effects are initially and reasonably attributable to water consumption by the Operator of a licensed nonmetallic mining operation, the Town shall issue a notice and order to stop the operation until the water use and water needs of the operation have been reassessed, the WI DNR has been notified and given the opportunity to undertake any investigation or permit review under its jurisdiction, options have been identified and evaluated to correct the adverse impact and a timeline can be developed for adequate mitigation and future monitoring and evaluation measures to be put into place. During the time a stop order is in effect the affected Operator can present and seek Town approval for an interim operating plan that does not involve the withdrawal of ground or surface water from the affected water table.

(4) Town Roads.

(a) When Trucks used in the nonmetallic mining operation will haul nonmetallic minerals (excluding gravel) or nonmetallic mining waste material over Town roads as a designated

haul route, the Operator shall first enter into a separate road use agreement pursuant to Wis. Stats. § 349.16, the purpose of which shall be to fund a complete traffic impact analysis of the Town road at issue and the highway upgrades, maintenance and repair of the road during the license term for the convenience and safety of the traveling public and to prevent financial burdens from being imposed on Town taxpayers due to road use in association with a nonmetallic mining operation. The road use agreement shall be in place before a license is issued or renewed under this Ordinance.

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

**(5) Hazardous materials.**

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

(b) The Operator shall not store, place or dispose of nonmetallic mining waste materials onsite that contain any hazardous materials. Nonmetallic mining waste materials shall not be moved onto the mine site described in an Operator's license that have been extracted from a nonmetallic mining operation other than the licensed site, and shall only be returned in the amounts authorized by and following the procedures specified in the site-specific Pepin County Reclamation Permit.

(c) The Operator shall develop and provide its written plan for responding to spills or releases of any hazardous materials on the site to the Town, Pepin County and all area emergency service providers who may be involved in responding to such spills or releases.

**(6) Special Exceptions.**

(a) An Operator can request a special exception from selected minimum standards of operation in this section if it can demonstrate to the satisfaction of the Town Board that the intent of this Ordinance will be achieved through the use of alternate measures and that the public health, safety and welfare will not be adversely affected thereby. The Town shall consider information provided by the public, the Operator and by the Town's retained experts in making this determination.

(b) The Town Board can impose requirements in addition to or exceeding the minimum operation standards of this Ordinance when it has evidence that the public health,

safety and welfare will not be adequately protected without the imposition of additional measures. The Town shall consider information and conclusions provided by the public, the Operator, the Town Planning Commission and by the Town's retained experts in making this determination.

(c) All exceptions to standards and additional requirements for the operations of a particular site must be clearly documented in a Developer's Agreement signed in approval by the applicant and the Town Board.

**(7) Registration License.**

(a) For nonmetallic mining operations that meet the criteria for a registration license set out in Section 4.(7), the Town Board shall grant a registration license after the Operator applies, pays an application fee and administrative deposit and submits the following information to the Town Board:

(i) Certification from the Operator that the operation meets the applicable requirements in Section 7. of this Ordinance, concurred in by the Town's retained expert.

(ii) Ownership information required by Section 6.(1) of this Ordinance.

(iii) A copy of the Pepin County reclamation plan(s) and reclamation permit and any licenses or permits issued by other federal, state or local agencies for the nonmetallic mining operation on that site.

(iv) An operation plan that applies best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operation. The Town's retained expert shall determine whether best management practices are present in the operation plan.

(b) The Town may require additional operation-specific information after application review.

(c) Registration licenses shall be subject to renewal every five years and are subject to all observation and enforcement provisions of this Ordinance.

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

### **(1) Annual Report.**

- (a) On or before March 1 of each calendar year in which a Town license is in effect, the Operator shall submit an annual report to the Town Board for nonmetallic mining operations regulated by each license an Operator has from the Town.
- (b) The annual report shall include the following information:
  - (i) Identification of the licensed Operator and map showing the location of the nonmetallic mining site at which the license is exercised, active nonmetallic mining areas on the site, anticipated areas of nonmetallic mining activity and reclamation presently and during the coming year, showing the number of acres for each. Information provided should include identification of any changes in ownership and any changes in use of contractors and subcontractors providing services to the Operator.
  - (ii) A description of activities and operations on the nonmetallic mining site during the previous calendar year including actual days and hours of operation, and of hauling on public roads, volume of nonmetallic minerals mined, volume transported off-site, and volume and location of stockpiled nonmetallic minerals and nonmetallic mining waste materials returned and placed onsite, with load counts, weights, and tickets available on request. Volume information should include both the median daily amounts and the maximum amounts for actual days of operation.
  - (iii) A description of activities and operations on the site anticipated for the following calendar year, and disclosure of any ways in which the coming year's plan differs from the information in the license application materials.
  - (iv) A written report describing how the Operator has been in compliance with all terms and conditions of its license and this Ordinance, including all groundwater, surface water, dust and other monitoring results.
  - (v) Full disclosure of all areas of non-compliance with the Operator's license and a plan for bringing all currently non-compliant areas of operation into compliance or a description of how compliance was achieved; also summaries of all complaints from adjoining landowners and members of the public since the last annual report, explaining how and when each complaint was received and mitigated or otherwise addressed.
  - (vi) Operator certification that the nonmetallic mining operation continues to meet or exceed the minimum standards of this Ordinance.

### **(2) License Renewal.**

- (a) The Operator shall make written application to the Town Clerk for a renewal of its Operator's license no later than March 1 of the year in which the license will expire. The application shall fully describe the manner and extent of operation being proposed during the renewal period and be accompanied by the payment of the license renewal fee and an administrative fee deposit.
- (b) The written request for renewal shall include the annual reports for all years during a past license period for which an annual report is not already on file with the Town.
- (c) The Town Clerk shall review the renewal application for completeness with the assistance of the Town Plan Commission and forward the complete renewal application to the Town Board.
- (d) The Town Board with the assistance of the Town Plan Commission shall review the renewal application to determine if additional information from the Operator is necessary to properly evaluate the renewal application. The Town's retained experts and a Town representative shall physically inspect the licensed mine operation.
- (e) The Town's retained expert and legal fees related to processing the renewal application shall be paid from the administrative fee deposit, which shall be replenished by the license renewal applicant upon written notice from the Clerk. Maintaining the administrative fee deposit is a condition of Town processing of the license renewal application. Amounts so deposited shall be held and used by the Town to pay its administrative costs and for its retained experts and legal fees. All requirements of Section 5(3)(c) of this Ordinance apply to the license renewal application administrative fee deposit.
- (f) When the Operator has submitted all additional information requested and all retained experts have reported to the Town Board on the review of the renewal application, site inspection and whether the nonmetallic mining operation has met and will continue to meet the requirements of this Ordinance, the Town Clerk shall place the license renewal application on the agenda of the next regular meeting or notice a special meeting of the Town Board if necessary for action prior to the expiration of the current license. The Operator shall pay the cost of any special meeting. Members of the public can submit written comment on the renewal application in advance of the meeting. The public and the license renewal applicant may be allowed to submit information at the meeting, at the discretion of the Town Board.
- (g) The Town Board shall grant an application for renewal of an Operator's license when it finds that:
- (i) There have been no material or recurring violations of the Ordinance or the license which have not been promptly and fully remedied by the Operator;

(ii) The Operator has not received multiple or recurring citations or corrective orders for violations of its Operator's license under this Ordinance;

(iii) All applicable fees and deposits have been paid and maintained and all financial responsibility requirements have been and are being met; and

(iv) The nonmetallic mining operation as proposed will meet or exceed the minimum standards of this Ordinance.

(h) If the Town Board denies an application for license renewal, the Town Board shall notify the Operator of the denial and the stated grounds for denial, in writing. The Operator shall have fifteen (15) days from receipt of notification to request a public hearing, provide additional information and request that the Town Board reconsider its denial.

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

**(1)** Access, Observation. In addition to mine site access and observation by the Town's retained experts and the designated Town representative related to license renewal, the Town Board, its retained expert or any Town representative has access to a licensed Operator's nonmetallic mining site at any time to protect the health and safety of the public, to observe operations and/or to evaluate compliance with the minimum operation standards and other requirements of this Ordinance, with or without advance notice to the Operator and upon showing proper identification. The Town's representative or observer has the right to document, photograph and/or video/audio record any possible evidence of violation while at the site.

**(2)** Violations. The following are violations of this Ordinance:

- (a) Engaging in nonmetallic mining in the Town without a Operator's license.
- (b) Noncompliance with the minimum operation standards and other requirements of this Ordinance during a license term.
- (c) Providing incorrect or false information or statements on documentation submitted during the Town licensing process or during Town inspection of the nonmetallic mining site or operation.
- (d) Failure to timely file an annual report.
- (e) Failure to take prompt and appropriate remedial or other action in response to a notice of water or air testing results in excess of allowable standards, notice of violation, citation, request for additional administrative fee deposit or financial assurance or other directive from the Town.
- (f) Failure to comply with all federal, state, county and local laws and regulations that govern or affect the Operator's nonmetallic-mining operation.

**(3)** Remedies. The Town Board or Town Chair may take any appropriate action or proceeding against any Operator or the landowner of any portion of a nonmetallic mining site when the Operator is deemed by the Town Board to be in violation of this Ordinance, including any one or more of the following actions:

- (a) Issue a stop work order.
- (b) Issue a notice of violation and order that specifies the action to be taken to remedy the situation within the deadline set to do so in the notice and order.



(c) Take action to complete any action specified in a notice of violation or order after deadline has expired for Operator action, and recover the cost of doing so from the Operator.

(d) Issue a citation.

(e) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (5) and injunctive relief.

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

**(4) Hearings.**

(a) Any Operator or license applicant who receives a notice or order issued under Section 9 of this Ordinance or is denied an Operator's license, license transfer, license amendment, registration license or license renewal may request a public hearing before the Town Board by filing a written petition with the Town Clerk requesting the hearing, setting forth the name, address and phone number of the person requesting the hearing, the person's interest in the Operator's license or application at issue, the grounds for requesting the hearing, outcome being requested and reasons in support of the requested outcome. The petition shall be filed within fifteen (15) days after the date of mailing of notice or order under Section 9 or within fifteen (15) days after mailing to the Operator or applicant the written denial of application for a license, transfer, amendment, registration license or license renewal application. Upon receipt of a hearing request, the Town Clerk shall set a time and place for the hearing and shall give the petitioner written notice thereof, which hearing shall be scheduled for a date within thirty (30) days of filing the request.

(b) At or within fourteen (14) days after the hearing, the Town Board shall vote to sustain, modify or withdraw the previously issued notice or order or action to grant or deny the license, transfer, amendment, registration license application or license renewal at issue, based on its findings as to whether the Ordinance has been violated or whether the applicant can meet the standards and requirements of this Ordinance. The person who requested the hearing shall be notified in writing of the Town's findings within ten (10) days of the Town Board's decision.

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

(d) When an Operator's license is revoked, all rights thereunder shall terminate immediately. The only nonmetallic mining operation that may be engaged in after license

revocation shall be reclamation activity conducted in compliance with the requirements of the Operator's reclamation permit from Pepin County.

**(5) Penalties.**

(a) An Operator, landowner, person or entity operating under a Registration License under Section 4(7) of this Ordinance adjudicated to have violated this Ordinance shall pay a forfeiture of not less than \$1,000.00 per violation nor more than \$5,000.00 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

(b) An Operator, landowner, person or entity adjudicated to have violated this Ordinance shall pay a forfeiture of not less than \$5,000.00 per violation nor more than \$25,000.00 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

(c) An Operator, landowner, person or entity adjudicated to have violated this Ordinance shall pay court costs, the Town's actual attorney's fees and the actual costs of the Town's retained experts to the extent not paid from an administrative fee deposit, in addition to any forfeiture.

**(6)** The failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violations(s).

## **Section 10. Financial Assurance**

**(1)** In addition to requirements related to minimum standards of operation, financial assurance shall be provided to the Town as a condition of issuance or renewal of an Operator's license, in the amount determined by the Town Board and the Town's retained experts to be 130% of amounts necessary for the following:

(a) **Road repair:** Amounts necessary for the repair and extraordinary maintenance of Town roads due to truck traffic transporting materials, supplies or equipment to or from the nonmetallic mining site at which the Operator's license is in effect during the duration of the license term. Repairs and extraordinary maintenance is defined as everything other than crack filling, minor surface repair, chip seal, shoulder pull-up, mowing and less than annually required pavement marking on every Town road used as a haul route for nonmetallic minerals, nonmetallic waste material and for empty trucks returning to the mine site.

(b) **Water Supply:** Amounts necessary to provide an alternate water supply to affected residences or agricultural operations when the groundwater is shown to have been adversely affected by the nonmetallic mining operation, as determined from the ongoing groundwater testing.

(c) **Administration costs:** Amounts necessary to support Town administration of the Operator's license and Developer's agreement including costs of inspection, enforcement, and for retention of experts to assist the Town Board and Plan Commission in these activities.

**(2)** Financial assurance to the Town shall be in the form of a cash deposit or irrevocable letter of credit in favor of the Town from an accredited financial institution, in a form and for a term acceptable to the Town.

**(3)** In the event the Town determines that the amount of financial assurance must be replenished or increased to meet specific road repair or water supply needs or administrative needs, or when the deposited amount has been depleted, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall provide the additional amount within fourteen (14) days of notification.

**(4)** The Operator shall also provide proof to the Town that it has provided and maintains full financial assurance to Pepin County for site reclamation as required under Wisconsin law and the County's Reclamation Permit.

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

- (1)** Landowners have a remedy under this Ordinance for damage to their private water supply:
- (a) When the preventative action limit for public health groundwater quality standard in Wis. Admin. Code Ch. 140 is exceeded in the private well serving the owner's property for substances, solids, turbidity and properties being tested for;
  - (b) When a substantial adverse impact on the quantity of water available for reasonable use from a private well on the owner's property occurs, including but not limited to the inability of the well to provide potable water on a continuous basis; and
  - (c) When lowering of surface waters that serve as a source of water for personal functions on the owner's property occurs, to levels below the baseflow levels at the beginning of nonmetallic mining operations.
- (2)** When an Operator receives test results for a well subject to baseline and periodic testing that exceed a preventative action limit for public health groundwater quality it shall immediately notify the Town, the affected property owner and resident, if different, and take immediate steps to provide an adequate interim potable water supply as required under (4) of this section.
- (3)** A property owner seeking a remedy under this section of this Ordinance shall serve notice on the Operator of the occurrence of the event giving rise to a remedy, explaining in detail the nature and extent of the problem and providing verification by private test result if available, and shall simultaneously serve a copy of the notice on the Town.
- (4)** Within twenty-four (24) hours of receipt of such a notice or Operator notification under (2) and absent earlier Operator action to do the same, the Town may use the financial assurance funds held as required under Section 10 of this Ordinance to provide an adequate interim potable water supply to an affected landowner for personal use, for livestock and for any food producing garden(s) served by the well at issue. The Town shall also use the said funds to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4) and to reimburse verified cost of testing or test verification measures undertaken by the affected landowner. The interim water supply shall continue to be provided until the Town has received any report or plan required by sub. (5).
- (5)** Within forty-five (45) days of receipt of notice under sub. (2) or (3), the Operator shall provide the property owner and the Town with a report that can be verified by the Town's retained experts and/or the affected landowner, demonstrating that the impact to the property owner is either not attributable to the nonmetallic mining operation or, if the impact is or is likely attributable to the nonmetallic mining operation, a plan for a permanent alternate water supply or adequate modification to the existing one, the cost of which shall be paid by the Operator, and the Operator shall continue to

provide the interim water supply until the permanent alternate water supply or modification is installed and operating satisfactorily.

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

## **Section 12. Severability, Interpretation, and Abrogation**

### **(1) Severability.**

(a) Should any section, clause, provision or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

(b) If any application of this Ordinance to a particular nonmetallic mining operation is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment is not applicable to nonmetallic mining operation not specifically included in said judgment.

(2) The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to be a limitation or repeal of any other power now possessed or granted to theTown.

(3) This Ordinance is not intended to repeal, nullify or interfere with any easements, covenants, deed restrictions or agreements created prior to its effective date.

**Section 13. Use of Developer's Agreement.**

The provisions of this Ordinance may be modified in a written Mining Agreement between the Town and an Operator when it provides an application-level administrative fee deposit to the Town prior to beginning negotiations to defray the Town's cost of negotiations including experts. The Town Board must determine that the Agreement will protect public health, safety and welfare at least as well as the protections provided by this Ordinance as a condition of entering any such Agreement. The Town Board shall consider information and opinions from the Town's retained experts in making this determination.

**Section 14. Effective Date**

Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication as provided by Wis. Stat. § 60.80(2) and (3).

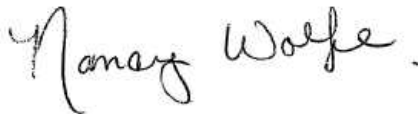
ADOPTED this 17 day of December, 2012.



Town Board Chair

Published this 17 day of Dec, 2012

Attest:



Town Clerk