

Table of Contents

Section 1. Finding, Purpose and Authority.....	1
Section 2. Applicability and Scope.....	1
Section 3. Definitions.....	2
Section 4. License Required	4
Section 5. Procedures For Applying For A License To Mine	5
Section 6. License Application	6
Section 7. Minimum Standards of Operation	9
Section 8. Annual Review and License Renewal	18
Section 9. Inspection, Enforcement, Procedures, and Penalties	21
Section 10. Financial Assurance	23
Section 11. Damages to Private / Public Water Supply	24
Section 12. Severability, Interpretation, and Abrogation	25
Section 13. Mining Agreement.....	25
Section 14. Effective Date	25

THE TOWN OF FARMINGTON

NONMETALLIC MINE OPERATOR'S LICENSE ORDINANCE

ORDINANCE NO: 8-20

Section 1. 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 depending on the type of geological deposit being mined and the manner and methods of mining and processing used, 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 Ordinance is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining and facility operations in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of 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.

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

Section 2. Applicability and Scope

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

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

(a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.

(b) Excavations or grading conducted for the construction, reconstruction, maintenance, or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad, or other transportation facility.

(c) Grading conducted for preparing a construction site (except a nonmetallic mining 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 of products or commodities that contain only minor or incidental amounts of nonmetallic minerals, such as commercial sod, agricultural crops, ornamental or garden plants, forest products, Christmas trees, or plant nursery stock.

(3) Nonmetallic Mine Expansion. In the event an Operator applies for a license that would entail an expansion of an existing nonmetallic mine, the applicant must bring the existing nonmetallic mine into compliance with the minimum standards imposed by this Ordinance. In all other respects, the application shall be treated as an application for the existing and expanded mine as a whole, and compliance with minimum standards shall be required for mine license approval.

Section 3. Definitions

(1) "Adjoining landowner" means any property within one (1) mile of the 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) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the Operator; all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, dewatering, transfer, transload or screening facilities, private roads, rail spurs, or haulage ways associated with a nonmetallic mining operation regardless of whether the materials come from on-site or off-site; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or Operator.

(4) “Nonmetallic minerals” means a product, commodity, or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, non-renewable material. Nonmetallic minerals include but are not limited to stone, rock, sand, gravel, asbestos, beryl, diamond, clay, coal, feldspar, peat, and talc.

(5) “Nonmetallic mining” means any or all of the following:

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

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

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

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

(e) Transport, transfer, or transload of the extracted nonmetallic minerals, finished products, or waste materials to or from the extraction site and/or processing site.

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(h) Stockpiling, storing, or processing of nonmetallic products off of the mine site.

(6) “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.

(7) “Operator’s license” or “license” means the license required of mining operators in this Ordinance to undertake nonmetallic mining in the Town.

(8) “Town” means the Town of Farmington, Polk County, Wisconsin.

(9) “Town Board” means the Town Board of the Town of Farmington, Polk County, Wisconsin.

(10) “Waste Material” means the non-marketable by-product that results directly from or is displaced by extraction or that is a by-product of a manufacturing process that is scheduled for disposal at the extraction site or some other site as part of a reclamation plan.

Section 4. License Required

(1) License Requirement. Except as set forth in Section 4(6), no person shall operate a nonmetallic mine site within the scope of this Ordinance in the Town without first obtaining an Operator’s license from the Town Board.

(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 five (5) years 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 30 after twelve (12) months of operations have been completed.

(b) An Operator’s license may be renewed as set forth in Section 8, except that a temporary Operator's license may not be renewed.

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

(4) License Transfer. An Operator’s license may be transferred to a new Operator only with the prior written permission of the Town Board, which shall be granted if the new Operator agrees to the conditions in place with the current Operator and if the new Operator provides all financial assurances as may be required by the Town, county, or state. For clarity, if the current Operator enters into a Mining Agreement with the Town, pursuant to Section 13 of this Ordinance, the current license may not be transferred unless and until the new Operator agrees with the Town in writing to assume all of the obligations under said Mining Agreement and to abide by the terms and conditions set forth in said Mining Agreement.

(5) License Revocation. An Operator’s license may be revoked under the procedures in Section 9.

(6) Temporary Operator License. The Town Board may grant a temporary nonrenewable Operator’s license not to exceed six (6) months, for mining operations within the scope of this Ordinance that were in existence as of the effective date of this Ordinance, provided that the Operator certifies that its operation will comply with the minimum standards in Section 7 and that the Operator submits a complete application under Section 5 within sixty (60) days of issuance of the temporary license.

Section 5. Procedures For Applying For A License To Mine

(1) Application Form. The Application Form for a license to mine in the Town shall be available from the Town Clerk.

(2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 6 to the Town Clerk together with payment of both the application fee and the base administrative fee established for the administration of this Ordinance as set forth in the Town fee schedule. The fees shall be made payable to "Town of Farmington." The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than 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 consideration under Section 5(4).

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that the application is incomplete. The Town Board may also retain the services of an attorney, 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 Ordinance.

(c) Additional Fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm, attorney, or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The additional fee shall be paid before the additional review is undertaken.

(d) Retained Expert Report. 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 application meets the requirements of this Ordinance.

(4) Decision by the Town Board.

(a) Notice and Hearing. 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 additional fees incurred for the special meeting. In the discretion of the Town Board, the Town Board may hold a public hearing regarding the application.

(b) **Town Board Decision.** The Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the Operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special 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 Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 9(3).

Section 6. License Application

All applicants for a mining Operator's license shall submit a complete Application Form. Incomplete applications will be returned to the applicant and review of the application will be put on hold. Applicants shall submit all of the following information, including any information not specifically requested on the Application Form as attachments to the form:

(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. In the event the owner or lessor is a corporation, applicant shall, where not burdensome, disclose for each member or shareholder of such corporation, their name, address, phone number(s), and e-mail address.

(c) The Operator shall designate a local contact person (either on-site or with an office in Polk County) who the Town can contact for information or with concerns. Said contact person shall be available by phone or in person during the hours the mine is in operation.

(d) If the Operator does not own the proposed mine site, 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 mine site.

(e) Proof that all property taxes on the proposed mine site are current. Only landowners who are current on their property taxes are eligible to apply.

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

(a) Parcel identification numbers of all contiguous parcels of the property on which the nonmetallic mining operation will be located. Certified survey map(s) shall be provided of any of those parcels as may be available at the time of application.

(b) An aerial photo of the proposed site at a scale no larger than one (1) inch equals six hundred sixty (660) feet signed by both the Operator and the landowner.

(c) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage, and parking areas.

(d) A topographic map or maps of the mine site extending one-half (1/2) miles beyond the site boundaries at contour intervals no wider than ten (10) feet showing the boundaries of the site, the location and total acreage of the site, and the name of all roads within one (1) mile of the site.

(e) A map on which all residential, agricultural, and municipal wells within one (1) 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 features on the site and within one-half (1/2) mile of the site. The base flow of the surface waters within one-half (1/2) mile of the mine site as determined at the time of application. The map shall specifically indicate the proximity of the mining activities to the boundaries of the St. Croix National Scenic Riverway.

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

(h) The gradient and depth of the groundwater table shall be determined by on-site boring or test wells. Data shall be gathered and analyzed by a qualified hydrogeologist hired either by the applicant or retained by the Town Board at the applicant's expense. Test wells located in the down-gradient direction of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations.

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

(j) A copy of the reclamation plan which has been submitted to Polk County; in addition, the applicant must submit any amendments or changes to that plan which are made during the approval process. If the reclamation plan is approved, a final copy of the reclamation plan must be provided to the Town Board.

(k) Information identifying the elevation of the groundwater table, groundwater flow directions, and groundwater velocities.

(3) Operation Plan.

(a) Dates of the planned commencement and cessation of the operation of the mine and processing facility and a description of the hours of operation of the mine site or processing facility, including all times when vehicles will enter or leave the site or facility.

(b) Description of mining methods, machinery, and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.

(c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year (or if the mine site is solely a drying, processing, transload or transfer facility, the amount of product that will pass through the site over the life of the site and for the next calendar year).

(d) Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage, and parking areas.

(e) Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the site.

(f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water used at, or falling on, the site including methods used for infiltration and control of run-off.

(g) A listing of any hazardous materials, including fuel supplies, that will be stored on-site and a description of measures to be used for securing and storing these materials. The operation plan shall include a written plan for responding to spills of these materials and fuels on the site and the frequency of regular drills for responding to spills on the site.

(h) A listing of all flocculants and other chemicals and approximate quantities used in the manufacturing or processing operations or in controlling dust and a detailed description of all expected releases and a final disposal plan for each. If the Operator desires to change or add chemicals, the Town Board must be notified in advance of any such change or addition.

(i) An analysis and projection of noise levels at the property boundary of the mining site together with proposed activities to mitigate off site noise impacts to any neighboring residential areas.

(4) Information Demonstrating Compliance with Minimum Standards.

(a) The Operator shall provide the information the Town deems necessary to demonstrate that the mining operation will comply with the minimum standards in Section 7.

(b) For mining operations commencing after the effective date of this Ordinance, the Operator shall also provide the Town with 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, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any chemical or residual of the chemical used as a flocculent and any other toxic substance, 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 one-half (1/2) mile of the site.

(c) The Operator shall disclose to the Town all citations or enforcement actions it has received or been a party to in last three (3) years relating to mining.

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

Section 7. Minimum Standards of Operation

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

(1) General Standards.

(a) The Operator shall stake or otherwise mark the borders of the entire site and shall secure the site by appropriate measures.

(b) The Operator shall demonstrate compliance with all the provisions of this Ordinance and all other applicable Town Ordinances.

(c) 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. The Operator shall demonstrate this by submitting a copy of all permits, approvals, or waivers of permits to the Town prior to commencing operations.

(d) The Operator shall meet at least annually with the Town at a regular Town Board meeting (or a special Town Board meeting at the Town Board's discretion) regarding operations and possible issues. At the request of the Town Board, the Operator shall provide a tour of the mine site to the Town Board and any other qualified person providing services to the Town Board.

(e) The Operator shall contact the Town Chairperson as soon as possible and no later than within two (2) hours, in the event of hazardous chemical or waste spills, leaks

or contamination of any kind, in the event of a release of any chemical, dust, or particles above levels permitted by applicable regulations, or any other emergency situation.

(f) The Operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the mining operation within the Town within ten (10) days of receiving such notice from the governmental body.

(g) The Operator shall undertake reasonable efforts to perform reclamation as an ongoing process to provide for as small a footprint of the actual operating mine as possible. At no time shall an area greater than forty (40) acres be open for mining at a time. Any license issued under this ordinance shall be limited to a specific tract of land not to exceed forty (40) acres. Upon completed reclamation of all or a portion of said forty (40) acre tract, the applicant can apply to amend the license to include additional acres up to forty (40) acres in total.

(2) Hours of Operation.

(a) The Operator shall limit hours of operation to Monday through Friday, not earlier than 6:00 a.m. and not later than 7:00 p.m. to minimize off-site impact to residents. It is anticipated that the hours from 6:00 a.m. to 7:00 a.m. will be a "soft start" and will not include operation of heavy or loud equipment such as crushers. Operations on-site shall not occur on Saturdays, Sundays, and Federal Holidays. The Operator may submit a plan for limited extended hours as a special exception, or as part of a Mining Agreement, if it can demonstrate that a temporary exception is necessary and would be consistent with public health, safety, and welfare. Any variance in the hours of operation must be brought to the Town Board for approval at a regular or special Town Board meeting. If approved, specific notification to the neighbors (property owners and residents in the Town or adjoining municipalities) within one-half (1/2) mile of the mine site shall be given by the Operator at least forty-eight (48) hours prior to implementation of the extended hours. Notwithstanding the foregoing, in the event of a public emergency as determined by the Town Chairman, the Town Chairman may grant a temporary exception to the operating restrictions contained in this Section 7(2). In such event, the Operator shall make reasonable attempts to notify those neighbors within one-half (1/2) mile of the mine site of the emergency operating schedule.

(b) Notwithstanding the hours of operation restrictions in Section 7(2)(a), the mining site may be open between the hours of 7:00 a.m. and 1:00 p.m. on Saturdays for purposes of loading and pick up of retail materials only. There is to be no mining production or crushing activities permitted during Saturday hours.

(c) Operation of commercial trucks, semi-trucks, dump trucks or similar heavy vehicles entering or leaving the mining site shall be limited to twelve (12) hours a day Monday through Friday not earlier than 6:00 a.m. and not later than 6:00 p.m. There shall be no operation of such vehicles entering or leaving the mining site on Saturday, Sunday,

or Federal Holidays except trucks are allowed to pick up retail materials on Saturdays as provided in Section 7(2)(b) above.

(d) The Operator shall schedule heavy vehicles to and from the mining site in a manner to avoid interfering with the safety of children being taken or returned from school, the safety of slow-moving farm vehicle traffic, or the safety of residents and commuters at times when traffic volume from commuters going to and from work is highest.

(3) Buffers Areas.

(a) Except as noted below, the Operator shall provide a buffer area, measured horizontally from the right-of-way line, of one hundred (100) feet along township roads and two hundred (200) feet along state highway and county roads, and a buffer area of fifty (50) feet along property lines.

(b) A three (3) to four (4) strand fence is required if the mine is next to a road. If any adjoining property owner would like similar fencing along the property line shared with the mine site, the Operator shall install such for the adjoining property owner. The Operator shall ensure compliance with any Mine Safety and Health Administration requirements pertaining to signage.

(c) Once active mining is commenced under a license issued pursuant to this Ordinance, a berm shall be constructed along all property lines subject to the license a minimum of ten (10) feet in height and such that no portion of the berm shall be closer than ten (10) feet to the property line or road right-of-way. All berms shall consist of topsoil and be seeded and/or vegetated to minimize erosion. Berms shall be replaced at reclamation. All berms shall have silt fencing along the exterior side until planting is fully established. Mining operations shall be screened from public view to the maximum extent practicable. Prior to construction, the Town shall be consulted on the analysis and configuration of the berm and must approve of its construction and placement.

(d) The mining operations shall stay five hundred (500) feet away from any residence, unless the Landowner agrees otherwise.

(e) The Operator shall provide a buffer from any navigable water as required by State and County rules and regulations.

(4) Control of Lights and Noise.

(a) The Operator shall limit night lighting on-site to that which is minimally necessary for security and worker safety. Every effort consistent with the legal requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. Upon written complaint of light pollution made to the Town Board, the Town shall notify Operator, which shall take steps to mitigate the light pollution by redirecting the lighting and taking other reasonable steps to address the complaint. At minimum, such measures shall include the following:

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

(b) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to adjoining landowners. The noise levels at the boundaries of the mining or processing site shall not exceed ninety (90) dB. The Town Board reserves the right to reduce the maximum allowed level where mining activities border residential areas based on evidence and recommendations from the Town's consultant(s). Every effort consistent with the legal requirements for safety shall be made to minimize off-site noise levels. At a minimum, such measures shall include the following:

- (i) The Operator shall utilize MSHA approved white noise back-up alarms.
- (ii) The use and regulation of compression release engine brakes, commonly known as jake-brakes, is prohibited except for emergencies. All trucks shall have proper mufflers. The Operator shall inform all truck drivers and any independent contractors that they must comply with the no jake-braking rule and all other applicable traffic codes.

(c) Noise levels shall be monitored at the nonmetallic mine site or processing facility property boundary by an independent testing company. The tests shall occur for a ten (10) day period at least twice per year. One such test shall be performed during a period of active crushing operations. The results shall be reported to the Town within thirty (30) days of the last test result.

(5) Blasting.

(a) No mine shall blast more than twelve (12) times in any calendar year and all such blasts shall comply with State and County blasting laws, rules, and regulations.

(b) All blasting must be performed by licensed blasters through the State of Wisconsin and adhere to all applicable regulations. The Town will hold the Operator responsible for violating the State's blasting regulations, and may seek compensation from the Operator. The Operator shall provide copies of all seismic results to the Town within fourteen (14) days of a blasting event. The Town may post seismic results of each blast on the Town's website.

(c) The Operator shall provide notice to anyone living within one-half (1/2) mile of the mine of blasting activities before blasting occurs. Such notice must be provided forty-eight (48) hours in advance. Anyone can request to opt-out of such notification or be added to the notification list, which shall be maintained by the Operator. The Operator shall provide notice to those on the notification list by telephone or e-mail, as is designated by the individual requesting notice as the preferred method of receiving such notice.

(6) Use of Town Roads.

(a) The Operator and any heavy vehicles under contract, lease, or license with the Operator shall comply with the weight limit provisions for Town roads, especially any seasonal weight or other emergency restrictions imposed by the Town.

(b) If the Operator needs to use heavy vehicles on Town roads in excess of the weight limits, then the Operator shall provide to the Town Board for review and approval, financial assurance to address any potential damage to Town roads resulting from such use. Such financial assurance can include but is not limited to the following:

(i) An agreement to rebuild the Town roads used as truck routes within six (6) months of the commencement of mining operations on site to standards appropriate to the weight of the vehicles used by the Operator, subject to prior review and approval of the Town Board, and subject to the provisions of a fund or maintenance and replacement of the road at the end of its useful life.

(ii) An irrevocable letter of credit or escrow account in an amount sufficient to rebuild and maintain the Town Roads used as truck routes.

(iii) Other financial assurance measures agreed upon by the Town Board.

(c) The Operator shall identify the routes which it will use for trucks traveling to or from the mine site; and shall use only the routes identified. The Town will provide routine grading (two (2) times per month), and any grading needed more frequently will be charged to the Operator.

(d) The Operator shall identify only one (1) entrance and exit to the mine site. If the Operator wants to move or alter the entrance/exit, such must be approved by the Town Board.

(7) Management of Air Quality.

(a) Site Roadways/Yard.

(i) The dust on the site roadways/plant yard shall be controlled by applications of water, calcium chloride, or other acceptable and approved fugitive dust control compounds, provided the application does not create a hydrocarbon,

odor, or water pollution problem (Section NR 415.075, Wis. Adm. Code). Applications of dust suppressants shall be done daily and whenever fugitive dust is observed. Follow-up observation shall be performed to ensure the effectiveness of the control measures.

- (ii) Any material spillage on roads shall be cleaned up immediately.
 - (iii) Fugitive emissions from haul roads will not exceed twenty percent (20%) opacity at the source (Section NR 415.075, Wis. Adm. Code).
 - (iv) Even though some equipment and activities are allowed up to twenty percent (20%) opacity at the source, no visible emissions of dust should ever be allowed to cross the property boundary.
- (b) Storage Piles.
- (i) Stockpiling of all nonmetallic minerals shall be performed to minimize drop distance and control potential dust problems.
 - (ii) Stockpiles shall not exceed a height of forty (40) feet above grade.
 - (iii) Stockpiles shall be observed daily and watered whenever fugitive dust is observed. After application, a follow-up observation shall be performed to ensure the effectiveness of the control measures. Equipment to apply water or dust suppressant shall be available at the site, or on call for use at the site, within a given operating day.
 - (iv) Encrusting agents approved by the Department or other covering methods shall be used on piles intended for long term storage or inactivity. Water application is not sufficient for long-term storage piles.
- (c) Reserved for future use.
- (d) Drilling & Blasting Activities.
- (i) All drilling activities will be performed using a wet method or other means to reduce fugitive emissions. Fugitive emissions from drilling well will not exceed twenty percent (20%) opacity at the source (Section NR 415.075, Wis. Adm. Code).
- (e) Air Monitors.

- (i) The Operator shall install air monitors at all nonmetallic mining operations in accordance with ambient air monitors required by the MSHA, DNR, or other Federal, State or County rules and regulations. A copy of the Air Permit shall be provided to the Town Board. Air emissions from the mining site shall meet all County, State and Federal standards. A violation of any Air Permit relating to the mining site shall also be a violation of this ordinance.
- (ii) In addition to ambient air monitoring required by the DNR, the Town may require the Operator to install additional monitors as a condition of licensing or licensing renewal if the Town determines conditions warrant additional monitoring.

(8) Control of Waste Materials. The amount of waste material (non-marketable fines) returned to a mine site as part of the reclamation process shall not exceed the site specific ratio of waste to target material of the extracted raw material as determined prior to the processing of the raw material. A processing facility shall keep records of the tonnage of raw material drawn from each raw material source. The tonnage of waste byproduct that is returned to each mine reclamation site shall not exceed the tonnage of waste contained in the raw material received at the processing facility from that site. In no event shall any soil containing levels of contaminants exceeding standards for residential exposure be utilized for reclamation purposes.

(9) Standards Regarding Groundwater and Surface Water.

- (a) Impacts to Groundwater Quality.
 - (i) At least sixty (60) days prior to commencement of nonmetallic mining operations, the Operator shall place sufficient test wells to verify the groundwater elevations on the mine site. Test wells shall be located down-gradient of the proposed mine site in the direction of groundwater flow not less than every eight hundred (800) feet so that they can serve as permanent sentinel monitoring wells during the course of operations. Such wells shall be at a depth of ten (10) feet below the water table at the location or as otherwise required by the Town's hydrologist. Additionally, one or more up gradient and or side gradient test wells may be required to be installed and maintained if recommended by the Town's hydrologist.
 - (ii) Mining operations shall have a least one monitoring well for every ten (10) acre sector of the mine site, and the Operator shall take quarterly samples for lead, arsenic, and any other toxic metal, chemical or compound as recommended by the Town's hydrologist that may reasonably be believed to be present in the area or in the type of deposit from which the extraction

will be made.

- (iii) Mining operations shall not extract materials at a depth below the point which is five (5) feet above the elevation of the ground water table. In addition, for areas west of State Highway 35 without approval of the Town Board, mining operations shall not extract materials at a depth below an elevation of eight hundred twenty-five (825) feet.
 - (iv) Mining operations and reclamation shall be conducted in a manner that does not cause groundwater quality standards in Wisconsin Administrative Code Chapter NR 140 to be exceeded at a point of standards application defined in that Chapter. Mining operations shall not cause a significant reduction in the quantity or quality of groundwater available for reasonable use by current users within one (1) mile of the mine site. A significant reduction includes a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.
- (b) Testing of Groundwater Quality.
- (i) The mine shall have sentinel wells not less than every eight hundred (800) feet down-gradient of the groundwater flow. Operator shall take quarterly samples of the sentinel wells for aluminum, arsenic, copper, lead, manganese, acrylamides, sulphur, zinc, total VOCs, pH, dissolved oxygen, and any other toxic substance that may reasonably be believed to be present in the area, produced or used in mining operations, or in the type of deposit from which extractions will be made.
 - (ii) Reserved for future use.
 - (iii) Monitoring at the sentinel wells shall also be used to determine changes in the level of the groundwater table.
 - (iv) Unless permission to sample is denied by the well owner, prior to the onset of mining operations, all private wells within one (1) mile of the property on which the mine site is located shall be sampled for the substances noted in Section 9(b)(i) to establish a baseline for future water quality comparisons or issues.
 - (v) All samples shall be tested and analyzed by an independent laboratory. All results of tests conducted according to this SubSection (9) shall be provided to the Town Board and the Town's hydrologist within thirty (30) days and may be posted on the Town's website. Mining operation shall not cause an exceedance of groundwater quality standard in Wis. Admin. Code Chapter NR 140 as amended.

- (vi) All wash plant and/or settling ponds shall maintain a minimum separation of five (5) feet to bedrock and be lined with at least two (2) feet of clay meeting the technical standards contained in Wis. Admin. Code § NR 504.04(2) for clay liners. One (1) test well shall be installed near such areas as recommended by the town's hydrologist.
- (vii) All information shall include contour maps and multiple geologic cross-sections passing through the proposed excavation and all areas of concern.
- (viii) Proposed operational data, including but not limited to:
 - a. Elevation of the lowest point of mining.
 - b. Description of the means planned to prevent surface water from running into the excavation.
- (c) Impacts to Surface Water Quality.
 - (i) Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within one-half (1/2) miles 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 operations.
 - (ii) 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 Wis. Admin Code Chapters NR 216 and NR 151, as applicable.
 - (iii) In the event that the mine site contains areas adjacent to the nonmetallic mining operations that are being used for agricultural, commercial, or residential purposes, the Operator shall undertake all measures necessary to control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.
- (d) Storm Water Management. Operator shall repair any damage to and remove sediment from any private property, or town roads, ditches, and other drainage ways when Operator is found responsible by the Town for such sediment or damage caused by runoff from the mine site for any reason, including but not limited to heavy rains and/or snowmelt runoff.
- (10) Hazardous materials.

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

(b) The Operator shall not dispose of waste materials containing any hazardous chemicals or residuals declared to be hazardous by a government agency on site or in the Town.

(c) The Operator shall have a plan for responding to spills of any hazardous materials on the site. Said plan shall be given to the Town prior to commencing operations and shall be updated any time any change or addition is made to any hazardous materials used on the site.

(11) Special Exceptions.

(a) The Operator can request a special exception from the Town Board from the minimum standards of this Section 7 if it:

- (i) can demonstrate that the intent of this Ordinance can be achieved by the use of alternative measures and that the public health, safety, and welfare will not be adversely affected thereby; and
- (ii) agrees to post a full coverage bond for any future damage caused as a result of any exceptions granted.

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

Section 8. Annual Review and License Renewal

(1) On-going Reporting Requirements.

(a) The Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental authority against the mining operation. The Operator shall provide notice to the Town of such actions within ten (10) days after receiving such notice from the governmental authority.

(b) All monitoring data, sampling results, and any other test results required by this Ordinance shall be undertaken at the Operator's expense and provided to the Town Clerk. Unless otherwise specified in this Ordinance, all monitoring data, sampling results, and any other test results shall be provided to the Town Clerk within fifteen (15) days of receipt of the results by the Operator.

(2) Annual Review.

(a) No later than March 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. The reporting period shall be from the date of the issuance of the first Operator's license to December 31, and thereafter from January 1 to December 31.

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

- (i) An identification of the Operator and location of the mining site.
- (ii) A map or drawing accurately showing the area of excavation, the unclaimed area, and any the reclaimed area, including a calculation of the number of acres for each type.
- (iii) A description of activities and operations on the site for the previous calendar year, including the cubic yards of each material extracted, sand processed, and waste material produced.
- (iv) A description of activities and operations on the site anticipated for the following calendar year, including sand extraction and waste material production.
- (v) A written report demonstrating how the Operator has been in compliance with all terms and conditions of its license and this Ordinance. The report shall also include any groundwater, surface water, and other monitoring results, as well as a copy of all annual reports submitted to all other agencies.
- (vi) A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(3) 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 three (3) months prior to the date on which the license will expire. The application shall be accompanied by the payment of both the renewal application fee and administrative fee as set forth in the Town's schedule of fees.

(b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of Section 8(2).

(c) The Town Clerk shall review the renewal application within thirty (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.

(d) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall retain an engineer or other qualified person with appropriate expertise to inspect the mine site unless the site is reported as being inactive during the past year, in which case a member of the Town Board or their designated person may be assigned to inspect the site. If no additional information or expertise is deemed necessary, the Town Board shall schedule the application for a decision under Section 8(3)(g).

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

(f) Once the applicant has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the renewal application meets the requirements of this Ordinance. 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 the expiration of the license.

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

- (i) there have been no material violations of the Ordinance or the license which have not been appropriately remedied;
- (ii) the Operator has not received multiple or recurring citations or orders for violations of the Operator's license or this Ordinance; and
- (iii) all applicable fees have been paid and financial responsibility requirements have been met.

(h) 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.

(4) Expansion and Progressive Reclamation.

(a) Nonmetallic mining operations and reclamation shall be conducted simultaneously, to the extent practicable, to restore areas no longer mined as soon as possible.

(b) Mine expansion is limited to forty (40) acres at a time, and subject to Town Board approval and amendment of the license. The Town Board will review an expansion request at the time such request is submitted. When the expansion is granted, the Operator must reclaim seventy percent (70%) of each acre currently opened. If the mining operations were begun before the effectiveness of this Ordinance, all mining operations must follow

this Ordinance at time of expansion. Notwithstanding the foregoing for mining sites currently in operation as of the effective date of this Ordinance, provided the Operator is in compliance with the approved County reclamation plan, the Operator may retain and utilize an area of up to thirty-five (35) acres of the then existing mine site for mining support operations for future mine expansion areas, such activities to include but not limited to washing operations, temporary stockpiling of materials, administrative buildings, loading and scale facilities, and similar administrative and operational functions. The thirty-five (35) acre support area shall be in addition to any allowed active mining area and shall be used only for mining support purposes.

(c) A phasing program is required of what area will be mined from year to year and what area will be reclaimed each year. This review will be included as part of the annual review set forth in Section 8(2) above. At no time shall an area greater than forty (40) acres be open for mining at a time.

Section 9. Inspection, Enforcement, Procedures, and Penalties

(1) Inspection.

(a) 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 Ordinance. The Town Board or their authorized representative may enter the mine site during regular hours of operation for inspection and, if necessary, to investigate any complaints. The Town official shall notify the Operator's designated contact person by phone prior to entering the site, and will report his presence to the onsite supervisor upon entering the site upon showing proper identification, and upon reasonable notice.

(b) If, as a result of any inspections or investigations the Town Board determines that a retained expert should undertake any further inspections or investigations, the Town may hire a retained expert which expense shall be paid by the Operator. If the Operator fails to provide access or provide payment of the Town's expenses, the Town may take enforcement action under Section 9(2).

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

(a) Engaging in nonmetallic mining without an Operator's license granted by the Town Board.

(b) Failure to comply with the minimum standards and other terms of this Ordinance.

(c) Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.

(d) Failure to timely file the annual operational report under Section 8 or to annually appear before the Town Board under Section 7(1)(d).

(e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10 or other order issued by the Town.

(f) Failure to provide or maintain any financial assurance required as a condition of approving the application.

(3) Hearings.

(a) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under Section 9(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 (30) days of the date the notice and order are served or upon thirty (30) days upon denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before 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 Section 9(4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance 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 Ordinance, including the following:

(a) Issue a stop work order.

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

(c) Issue a citation in accord with the Town citation ordinance if the Town has enacted such an ordinance.

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under Section 9(6) and injunctive relief.

(e) Suspend or revoke the Operator's license under Section 9(5).

(5) License Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an Operator's license for a violation under Section 9(1).

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$500.00 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.

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

(7) Non-Waiver. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present violation(s).

Section 10. Financial Assurance

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

(a) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the site. Upon the agreement of the Town Board, the financial assurance may be in the form of a Road Maintenance Escrow Account.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences, agricultural operations or municipal operations within three (3) miles of the site or such other area shown to be impacted by the Operator's operations.

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

(3) If at any time after a license is issued, 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 thirty (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, if applicable.

Section 11. Damages to Private / Public Water Supply

(1) A property owner, including a municipality, within one (1) mile of the mine site may seek remedies under Sections 11(2)-(5) for any of the following damages to private or public water supply caused by the Operator or its employees or contractors:

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

(b) A substantial adverse impact on the quantity or quality of water from a well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.

(c) A lowering of surface waters which serve as a source of water for personal, agricultural, or municipal functions on the owner's property to levels below base flow levels for more than five (5) days.

(2) Any property owner under Section 11(1) seeking a remedy under this Section shall simultaneously file a notice with the Town and the mine Operator of the occurrence of the event under Section 11(1) explaining the nature and extent of the problem.

(3) Within twenty-four (24) hours of receipt of such notice under Section 11(2), the Town may use funds provided under Section 10 (if applicable) to provide an adequate interim water supply. If applicable, the Town shall also use funds under Section 10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under Sections 11(4) and (5).

(4) Within twenty (20) days of receipt of notice under Section 11(2), the mine Operator may provide to the property owner and to the Town a report that demonstrates that the impact to the property owner was not attributable to the mining operation, or to present a plan for a permanent alternative water supply to be paid by the Operator.

(5) The Town shall in consultation with the property owner review the report or plan and approve or deny such report or plan. If the Town determines that the Operator's report is incorrect or insufficient, the Town may continue to provide an interim water supply (if a fund for the same has been set up pursuant to Section 10 during any subsequent negotiations, mediation, or litigation. If the Town determines that the mine Operator was not the cause of damage to the private water supply, the Operator may elect to seek reimbursement by the property owner for the costs of supplying interim water during a period not exceeding one year.

(6) A property owner beyond one (1) mile of the mine site may apply to the Town for use of funds under Section 10, if applicable, to remedy damages to a private water supply identified in Section 11(1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in Sections 11(2) to 11(4).

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 final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.

(b) If any application of this Ordinance to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.

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

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

Section 13. Mining Agreement

Any of the provisions of this Ordinance, including the license term, may, after notice, be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public that are substantially equivalent of those of this Ordinance.

Section 14. Effective Date

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

ADOPTED this 19th day of August, 2020.



Dennis Cottor
Town Board Chairperson



Rick McGuiggan
Town Board Supervisor



Dennis Neumann
Town Board Supervisor

Attest:



Debbie Swanson
Town Clerk