

THE TOWN OF CLEVELAND, JACKSON COUNTY
NONMETALLIC MINE OPERATOR'S LICENSE ORDINANCE
Ordinance 2014-1

Contents

Section 10.01. Finding, Purpose and Authority2

Section 10.02. Applicability and Scope2

Section 10.03 Definitions3

Section 10.04 License Required4

Section 10.05 Procedures for Applying for a License to Mine6

Section 10.06 License Application Required Information7

Section 10.07. Minimum Standards of Operation10

Section10.08. Reporting, Annual Report, Inspection and License renewal16

Section 10.09 Inspection, Enforcement, Procedures and Penalties18

Section 10.10. Financial Assurance20

Section 10.11. Damages to Private Water Supplies21

Section 10.12 Developers Agreement22

Section 10.13. Severability, Interpretation, and Abrogation22

Section 10.14. Effective Date23

Section 10.01. Finding, Purpose and Authority

(1) Findings. Nonmetallic mining operations, while potentially a vital component of our state and local economy, is an industrial use which can have both direct and indirect adverse impacts. Studies have documented that nonmetallic mining can have adverse impacts on property values, groundwater and surface water, and can generate harmful levels of air pollution and noise particularly if blasting and crushing operations, or washing and drying processes, are undertaken. Nonmetallic mining sites can have negative impacts on the landscape, natural environment, archeological or cultural sites and aesthetics, and can present safety concerns to members of the public if not properly secured. Nonmetallic mining operations can also generate high volumes of truck traffic that can present safety issues and concerns for the proper and timely maintenance of Town roads, and exposure to nuisances of noise, light and air pollution. 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, as well as potential financial costs to the community.

(2) Purpose. The purpose of this Ordinance is to provide minimum standards for all nonmetallic mining operations and processing facilities in the Town subject to Section 10.02(1), to require licenses for nonmetallic mining operators and facility operators in order to protect public health and safety, to minimize or prevent adverse off-site impacts from on-site and off-site operations, to provide for adequate and appropriate financial protections and assurances and to promote the general welfare of the people and communities within the Town of Cleveland.

(3) Authority. This Ordinance is adopted by the powers granted to the Town of Cleveland by the Town's adoption of Village powers under Wis. Stat. §§ 60.10, 60.22(3) 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 10.02. Applicability and Scope

(1) This Ordinance shall apply to all nonmetallic mining operations and mine sites including processing facilities within the Town of Cleveland which extract, process or transport more than 50,000 cubic yards of material in any calendar year from one or more mine sites in the Town.

(2) This Ordinance does not apply to the following activities:

- (a) Excavations or grading 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 right-of-way of the highway, railroad or other transportation facility.
- (c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.
- (d) Excavations for building construction purposes conducted on the building site.

(e) Nonmetallic mining at nonmetallic mining sites where less than one acre of total affected acreage occurs over the life of the mine.

(f) Removal of products or commodities from the earth 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.

Section 10.03 Definitions

(1) "Buffer" means an undisturbed vegetated area measured from the nonmetallic mine site or processing facility border into the nonmetallic mine site or processing facility, in which no nonmetallic mining activities, or structures can occur. Vegetated berms are allowed. Roads are allowed.

(2) "Dwelling" means a structure or part of a structure that is used or intended to be used and occupied for human habitation as a home or residence by one or more persons.

(3) "Developers Agreement" means an agreement authorizing certain mining operations in accordance with the provisions of Section 10.12.

(4) "Heavy Vehicle" means a vehicle over 48,000 pounds.

(5) "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.

(6) "Nonmetallic mining" or "nonmetallic mining operation" 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 industrial processing operations that may involve the use of equipment for the crushing, screening, separation, washing, drying, treating or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site.

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

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

(e) Transporting of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site and/or processing site(s), including conveyor systems, operator owned rail spurs, loading operations, heavy trucks, and transload facilities.

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

(g) Reclamation of the mine site and disposal of mining waste materials.

- (7) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.
- (8) 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 in or contiguous to areas excavated for nonmetallic mining on which any structures, equipment, storage facilities, stockpiles, washing, drying, processing, separation, shipping, blending or screening facilities, private roads or haulage ways associated with nonmetallic mining operation are or will be located; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator.
- (9) "Neighboring landowner" means any property within 1 mile of the proposed mine site or processing facility regardless of whether there is a residence or structure on the property.
- (10) "Operation" means the temporary, active, or suspended use, management, or control of land, property, personnel, or equipment for nonmetallic mining purposes as defined under Section 10.03(5).
- (11) "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.
- (12) "Operator's license" or "license" means the license required of mining operators in this Ordinance to undertake nonmetallic mining or processing in the Town of Cleveland
- (13) "Processing facility" or "processing site" means a location off of the mine site on which any facilities, structures, equipment, private roads or haulage ways associated with nonmetallic storage facilities, stockpiles, washing, drying, processing, separation, blending or screening operations are conducted. NOTE: Such processing facilities and operations conducted on the mining site are considered part of the mine site.
- (14) "Parent corporation" shall mean a duly incorporated for profit or nonprofit corporation which is engaged in the business of mining but shall not include a corporation five percent (5 %) or more of whose outstanding common stock is owned by another corporation.
- (15) "Retained expert" means professional consultants including but not limited to engineers, attorneys, planners, environmental specialists, personnel from the Jackson County Land Conservation Department and other consultants with skills relevant to reviewing, processing and acting upon applications for a Operator Licensing or Planned Mining Operation or to issues associated with the inspection, monitoring and enforcing of approvals arising under this Ordinance.
- (16) "Town" means the Town of Cleveland.
- (17) "Town Board", means the Town Board of the Town of Cleveland.
- (18) "Waste Material" means the non-marketable by-product that result 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 10.04 License Required

(1) License Requirement. Except as provided in sub (6) or (7), no person shall operate a nonmetallic mine or processing facility within the scope of this Ordinance in the Town of Cleveland without first obtaining an operator's license from the Town Board. License granted to other than a natural person under this Ordinance shall be granted only to a parent corporation. No subsidiary corporation shall be entitled to a permit under this Ordinance.

(2) Required Zoning. If town or county zoning regulations have been enacted, the property shall be appropriately zoned to allow for the proposed nonmetallic mining operation(s), including obtaining any required conditional use permit approvals, prior to submittal of a license application or mining agreement under this Ordinance.

(3) License Term.

(a) An Operator's license shall be granted for a period of one year commencing on January 1 and ending on December 31 of each calendar year. For the first year of licensing under this Ordinance, the Operator's license will extend from the date of issuance through the first full 12-month period ending December 31 after the license is issued. For example, if the license is first issued in February 2014, it will extend to December 31 of 2015.

(b) An Operator's license may be renewed as set forth in Section 10.08.

(4) 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.

(5) License Transfer. An Operator's license may not be assigned or transferred without the express written consent of the Town Board.

(6) License Revocation. An operator's license may be revoked under the procedures in Section 10.09.

(7) Existing Facilities. Non-metallic sand and gravel mines in operation prior to the effective date of this ordinance are eligible for a registration license under this subsection provided that such operations meet the following requirements:

a. The operation has been in existence and operating for at least 2 years within the Town and during that time has not had a material violation of state or local law, and has not created nuisance conditions nor been the subject of any legal proceedings alleging negligence or nuisance conditions.

b. The nonmetallic mining operation does not extract or process more than 100,000 cubic yards in any one calendar year.

c. The operation has a Reclamation Permit from Jackson County, and files a copy of the Permit and any reclamation plans with the Town.

d. The operation is for the original reclamation plan approved by Jackson County. If the reclamation is modified, the mine is considered a new operation and is subject to the licensing requirements of this ordinance.

e. The operator files a certification with the Town Board that it will use best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operations.

f. Registration licenses shall be subject to renewal every two years as set forth in Section 10.08(2) and subject to the inspection, enforcement and provisions of Section 10.09.

Section 10.05 Procedures for Applying for a License to Mine

(1) Application Submittal.

(a) The payment of the application fee of \$150.00 the fees shall be made payable to "Treasurer, Town of Cleveland." The Application shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator. Electronic versions of all application information shall also be provided to the Town Clerk in a commonly used digital format on a CD-ROM, DVD, or other commonly used computer storage media that is compatible with a Windows-based home computer operating system. The Town of Cleveland shall not be held responsible for any costs incurred by the applicant in the preparation and submittal of an application.

(b) A bond or other security, payable to the Town, conditioned upon performance of all road and water requirements of this ordinance.

(2) Reimbursement Of Fees And Costs.

(a) Reimbursable Costs. The Town Clerk and other Town staff may expend time in the review and processing of the application. The Town may also retain the services of a Retained Expert for purposes of reviewing, processing and acting upon applications for Operator Licensing.

(b) Preliminary Cost Reimbursement Agreement. At the time an application for approval of an Operator's License is filed with the Town, the applicant shall execute for the benefit of the Town an agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, water and air monitoring, review and processing of the application, including any Retained Experts and staff administrative costs. The agreement and the security shall be in form and substance acceptable to the Town. The Town shall not begin processing the application until the preliminary cost reimbursement agreement is approved and signed and until the required security is provided to the Town. The Town may accept an initial deposit of \$3,000.00 to begin license processing and to provide an estimate to the applicant of anticipated costs, but it shall not be required to incur any processing costs beyond that for which a deposit or other security has been approved. The fees shall be made payable to "Treasurer, Town of Cleveland"

(3) Preliminary Review and Decision.

(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 issue a public notice and schedule a hearing under sub (4).

(b) Additional Information. The Town Board may request the applicant to submit additional information if the Town Board determines that application is incomplete. The Town Board may also retain the services of a 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 a Retained Expert is warranted it 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 by the applicant or landowner before the additional review is undertaken

(d) Preliminary Decision. Upon completion of its review and that of any Retained Experts, the Town Board shall issue a preliminary decision whether to grant a license to operate a nonmetallic mine or processing facility with or without restrictive conditions on use, or to deny the application for a license.

(4) Decision by the Town Board.

(a) Notice and Hearing. The Town Clerk shall place the preliminary decision of the Town Board on the agenda for the next regular meeting of the Town Board. The Town Board shall set a date for a public hearing and give Class III public notice plus post at the designated posting places at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed mine license.

(b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the Operator's license. The Town Board shall review the application, any Retained Experts' reports, and public comments made and information provided at the public hearing. In the case of an application for an Operator's license, the Town Board shall grant the license if it determines that the operation of the nonmetallic mine or processing facility 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 10.09(3).

Section 10.06 License Application Required Information

All applicants for a nonmetallic mining Operator's license shall submit the information required in this section. The applicant may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this section is located in any referenced material.

(1) Ownership Information.

(a) The name, address, phone numbers, and email 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 nonmetallic mining operation will occur.

(c) If the operator does not own the proposed mine site or processing facility, a copy of a fully executed lease and/or agreement between the landowner and the Operator who will engage in mining operations on the proposed site.

(2) Site Information and Maps.

(a) Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the nonmetallic mining operation will be located. Survey maps 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 of not less than 1 inch equal to 660 feet.

(c) A topographic map of the proposed nonmetallic mine site or processing facility extending 1 mile beyond the site boundaries at contour intervals no wider than 10 feet showing the boundaries of the site, the location and total acreage of the site, and any likely proposed expansion area for the mine, the processing operation, or the rail line, and the name of all roads within one mile of the site.

(d) A site plan for the proposed nonmetallic mine site or processing facility including a map showing the location within the site of all existing and proposed buildings and other structures, equipment, stockpiles, storage and parking areas. Topographical elevations and maximum heights of all buildings, structures, equipment, and stockpiles. Road access points and buffer areas along bordering properties and public roads.

(e) A plan for staking or marking the borders of the entire nonmetallic mine site or processing facility, and for securing the site by appropriate measures which may include fencing or alternative measures consistent with mine safety and security.

(f) A map on which all residential, agricultural and municipal wells within 1 mile of the boundaries of the nonmetallic mine site or processing facility in all directions are marked and given a numerical identification of the location.

(g) 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 ½ mile of the nonmetallic mine site or processing facility. The base flow of the surface waters within ½ mile of the nonmetallic mine site or processing facility shall be determined at the time of application.

(h) The Operator shall place sufficient test wells to verify the groundwater elevations, gradient and depth of the groundwater. 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. In addition, the Operator shall install sufficient wells to determine the amount of drawdown estimated to occur from the mining operation.

(i) A description including soil maps and diagrams of the distribution, depth and type of topsoil for the mine site not only of the area of the site currently proposed for mining and for which an Operator's license is being submitted, but also of the entire acreage of land contiguous with the proposed mine site that is owned by the same landowner/lessor. The description shall include the geological composition and depth and width of the nonmetallic deposit and the location of slopes greater than 20% and highly erodible soils.

(j) A map identifying the location of all other non-contiguous mine sites within the Town of Cleveland and adjacent towns, if any, that will contribute extracted material to the same nonmetallic mining site, or processing facility for which the applicant seeks a license.

(k) A letter from the Wisconsin Department of Natural Resources concerning any threatened or endangered species at the mine site.

(l) A Non-Metallic Mining reclamation permit from Jackson County.

(3) Operation Plan.

(a) Dates of the planned commencement and cessation of the operation.

(b) Description of hours of operation, of the nonmetallic mine site or processing facility including all times when vehicles will enter or leave the site or facility.

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

(d) Estimated volume of material to be extracted over the life of the mine and for the next calendar year. Processing, manufacturing, stockpiling, transport, or shipping operations shall provide similar volume estimates for each activity.

(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 nonmetallic mine site or processing facility, an assessment of the adequacy of roads within proposed off-site trucking routes and a description of any proposed alterations or improvements to such roads, and a description of any traffic control or other measures needed to protect public safety.

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

(g) A listing of any hazardous materials, including chemicals, or flocculants used in the nonmetallic mining operation or in controlling dust, fuel supplies that will be stored on nonmetallic mine site or at processing facility and a description of measures to be used for securing and storing these

materials. A detailed description of expected releases and final disposal of each. 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 landscaping and site plan, including any plantings, schedule of plantings, proposed buffer areas, fencing/gating, and areas not to be disturbed.

(i) Copies of all storm water management, grading, and erosion control plans as required by the Wisconsin Department of Natural Resources.

(j) A letter from the Wisconsin Department of Natural Resource concerning any threatened or endangered species/plants at the mine site

(4) Information Establishing Baseline Conditions/ and Compliance with Minimum Standards.

(a) The Operator shall provide such additional information the Town deems necessary to determine whether the proposed nonmetallic mining operation will comply with the minimum standards in Section 10.07. For operations commencing after the effective date of this Ordinance the operator shall provide information establishing baseline conditions before mining operations commence, including:

(b) The groundwater elevation, groundwater gradient and flow direction, and groundwater quality 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 that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made at the site and within ½ mile of the proposed mine site boundaries as determined by onsite borings or test wells. Data shall be gathered and analyzed by a qualified hydrogeologist hired by the Town Board at the applicant's expense. Test wells located in the down gradient directions of groundwater flow shall be located so that they can serve as permanent sentinel monitoring wells during the course of operations.

(c) The base flow, Temperature, pH, turbidity, of surface water 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 at the site and within ½ mile of the proposed mine site boundaries. Data shall be gathered and analyzed by a qualified hydrologist hired by the Town Board at the applicant's expense.

(d) The Operator shall also provide information establishing background conditions for air quality at the site's boundaries before operations commence. Including fine particulates (PM_{2.5}) in ug/m³ and total suspended particulates (TSP) ug/m³ before operations commence using appropriate EPA methods. Data shall be gathered and analyzed by a qualified air quality specialist hired by the Town Board at the applicant's expense.

Section 10.07. Minimum Standards of Operation

The Town Board shall grant an Operator's license if it finds that the proposed nonmetallic mining operation will be consistent with the following standards, and the purposes of this Ordinance:

(1) General Standards.

- (a) The borders of the entire nonmetallic mine site or processing facility shall be appropriately staked or marked, and the site shall be secured by appropriate measures which may include fencing or other alternative measures consistent with mine safety and security.
- (b) The nonmetallic mining shall comply with all applicable Town of Cleveland 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 obtained prior to commencement of operations and prior to approval and execution of the Agreement by the Town Board or the issuance of the License by the Town Board for the Mining 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 provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental, municipal or public body against the mining operation/operators within the past ten years.
- (e) The operator shall comply with blasting regulations set forth under Wis. Admin. Code Ch. SPS 307

(2) Standards Regarding Buffers, Screens and Setbacks.

- (a) Except as noted below in sub. Sec. (b), the Operator shall provide a buffer area of a minimum of 750 feet from property line, 300 feet from stream to the nonmetallic mine site or processing facility, to protect bordering properties from noise, dust, lighting, odors, blasting, and other adverse impacts of the operation, along bordering property lines and public roadways.
- (b) The buffer area shall provide a setback of 1/4 mile from the mine site or processing facility to the location of any dwelling, unless the landowner consents to a lesser distance but not less than 300 feet, and 1 mile to any school or medical facility.
- (c) The operator shall screen the mining operations from public view. Screening may be achieved through the use of berms, additional setbacks or other measures deemed adequate by the Town Board.

(3) Hours of Operation

- (a) The Operator shall limit normal hours of operations at the nonmetallic mine site or processing facility to 10 hours a day Monday through Friday not earlier than 5:00a.m and not later than 6:00 p.m. and 6 hours on Saturday not earlier than 7:00 a.m. and not later than 4:00 p.m. to avoid substantial or undue impacts on neighboring properties and town residents. Operations on-site shall not occur on Sundays or named holidays.

b) Operation of Heavy Vehicles leaving the nonmetallic mine site or processing facility shall be limited to 10 hours a day Monday through Friday not earlier than 6:00 a.m. and not later than 6:00 p.m. and 6 hours on Saturday not earlier than 7:00 a.m. and not later than 5:00 p.m. There shall be no operation of Heavy Vehicles leaving the nonmetallic mine site or processing facility on Sunday or named holidays.

(c) The Operator shall schedule movement of Heavy Vehicles and to and from the mining site in a manner to avoid interfering with the safety of children being taken to 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.

(d) The Operator shall obtain written approval from the Town Board for any temporary closure of the mine, processing operation, or rail line operations, which will last more than one(1) week and where the operator shall immediately state in writing to the Town Clerk the specific reasons for such temporary closure.

(4) Use of roads within the Town

(a) The Operator shall identify the routes which it will use for trucks traveling to or from the Property; and shall use only the routes identified.

(b) The Operator and any Heavy Vehicles under contract, lease or license with the Operator shall provide to the Town Board for review and approval, financial assurance to address any potential damage to Town Roads resulting from the use of such roads. Such financial assurance can include but is not limited to the following:

1. An agreement to rebuild the Town Roads to be used as truck routes before the commencement of mining operations 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 provision of a fund for maintenance and replacement of the road at the end of its useful life.
2. An irrevocable letter of credit or escrow deposit in an amount sufficient to maintain the Town Roads used as truck routes.
3. Other financial assurance measures agreed upon by the Town Board.

(c) The Town may adjust the amount of financial assurance on an annual basis to ensure that the amount is adequate to rebuild and maintain the Town Roads.

(d) If the Town Roads are being used by more than one Operator, the Operators may propose and the Town Board shall consider a joint agreement to satisfy the financial assurance obligations in this section.

(5) Control of Light and Noise

(a) The Operator shall limit night lighting on nonmetallic mine site or processing facility, 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. At a minimum such measures shall include the following:

1. The use of zero uplight luminaries whenever possible and the use of full cutoff shrouds on all lights.

2. Portable lighting shall be used only as necessary and not for extended periods of time to illuminate temporary work areas. Temporary lighting that does not conform to this Section may be allowed if required under MSHA.

3. The use of berms of sufficient height coupled with other methods of visual screening to block light from the mine or processing facility to neighboring properties.

4. The design and location of access roads to minimize lights from traffic and operations to neighboring properties.

5 Except for lighting on vehicles or moving equipment, there shall be no flashing, revolving, or intermittent lighting which could be considered a nuisance or distraction to vehicular traffic or neighboring properties.

6 Search lights, laser source lights, and any similar high intensity lighting shall not be permitted, except in emergencies by police or emergency personnel or at their discretion.

(b) The Operator shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts to neighboring landowners. The noise levels at the boundaries of the mining or processing site shall not exceed 60dB. The noise levels at the boundaries of any school or medical facility shall not exceed 50 dB. Decibels shall be based on dbA which is the unit of sound level expressed in decibels (db) and A- weighted as described in ANSI § 1.4. 1983 and shall be measured in accordance with accepted protocols. White noise back-up alarms shall be installed on all equipment requiring beepers per OSHA and MSHA standards. Not applicable to rail spurs.

(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 10 day period at least once per quarter for first year. If noise complaints are received or decibel levels exceeded monitoring will be extended beyond one year. The results shall be reported to the Town within 30 days of the last test result. Not applicable to rail spurs.

(d) The use of compression release engine brakes, commonly known as jake-brakes is prohibited within the Township except for emergencies.

(6) Control of Air Pollution

(a) Regardless of the actual monthly production of the nonmetallic mine, the Operator shall cover all trucks hauling sand with secured tarps, and utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.

(b) High wind events. The Operator shall have an established protocol, approved by the Town Board, for additional air pollution control measures when the National Weather Service has issued a High Wind Warning for the area or the wind speed is detected in the area by an approved monitor at the same level as a National Weather Service Wind Advisory. (A Wind Advisory is for winds greater than or equal to 30 mph lasting for one hour or longer, or winds greater than or equal to 45 mph for any duration.) The established protocol shall include the specific location of the anemometers that the Operator will rely upon to determine wind speed and a daily procedure to ensure wind speed is monitored and appropriate measures are implemented during high wind events.

(c) Air monitors.

1. If an applicant is applying for an operator's license for a mining operation or a silica sand processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of fine particulates (PM_{2.5}) in ug/m³ and total suspended Particulates (TSP) ug/m³ as measured by the method described in Appendix A. The type and number of monitors needed, the location of the monitors, and frequency and duration of the monitoring program shall be determined by agreement of the operator, the Town Board and its consultant, but all costs associated with monitoring shall be borne by the operator.

2. The monitoring shall be conducted for the life of the mine. Monitoring frequency may be revised if no active mining is occurring for 6 months or more.

3. The Operator shall submit all monitoring results to the Town Clerk on a monthly basis. Results for each month shall be postmarked or received by the Town Clerk no later than the last day of the following month. The Town Board shall provide public access to all results. The Town Board may require additional or updated monitoring as part of licensing renewal if there have been complaints about dust and particulates from the mine site.

4. If the air monitors show an exceedance of 12 micrograms per cubic meter of PM_{2.5} particles in any 24 hour period, the Operator shall evaluate and implement additional best management practices to minimize PM_{2.5} particles. If there is repeated exceedance of these standards notwithstanding the implementation of best management practices, the Town may suspend or revoke the license.

(d) Other requirements. The Operator shall completely enclose any dry processing facilities and shall enclose to the extent practicable any loading or unloading facilities. The Operator shall cover all trucks hauling sand with secured tarps.

(7) 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.

(8) Standards Regarding Groundwater and Surface Water.

The requirements in this subsection apply to any nonmetallic mining site and any processing facility involving a wash plant or other water intensive process. The costs of monitoring for water quality/quantity will be paid by the applicant.

(a) Impacts to Groundwater Quality.

1. The nonmetallic mine site or processing facility shall have at least one sentinel well, and may be required to have additional wells at Town Board discretion, at the boundary of the nonmetallic mine site or processing facility that is down gradient of the groundwater flow. The Operator shall take quarterly samples from the sentinel well 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 that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made during the first 2 years of operation and twice a year in subsequent years.
2. The mining company shall sample private wells within ½ mile of the nonmetallic mine site or processing facility down gradient of the groundwater flow every 2 years and private wells on the perimeter of other sides of the mine site every 3 years.
3. Monitoring at the sentinel well shall determine changes in the level of the groundwater table.
4. Prior to the onset of nonmetallic mining operations, the Operator shall sample all private wells within 1/2 mile of the property on which the nonmetallic mine site or processing facility is located. The wells shall be sampled for lead, arsenic, turbidity, total suspended solids, chlorides, nitrates, specific conductivity and any other toxic substance that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made.
5. Nonmetallic mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Chapter NR 140.
6. All samples shall be analyzed by an independent laboratory at the operator's expense.
7. All wash plant settling ponds shall be lined with at least 5 feet of clay meeting the technical standards contained in Wis. Admin Code §NR 504.06(2) for clay liners.

(b) Impacts to Groundwater Quantity.

1. At least 60 days prior to commencement of nonmetallic mining operations, the Operator shall place sufficient test wells to verify the groundwater elevations on the nonmetallic mine site or processing facility. 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.
2. No mining operations, including excavation, settling/separating ponds, landfilling, landscaping and reclamation, shall be vertically closer than a depth of ten (10) feet to an existing groundwater table.
3. Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by users within ½ mile of the nonmetallic mine site or processing facility. 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.

(c) Impacts to Surface Water Base Flow. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters within 1/2 mile radius of the mine site or processing facility, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(d) Impacts to Surface Water Use. Mining operations shall not cause a lowering of the groundwater table that results in adverse effects on surface waters which serve as a critical source of water for agricultural, recreational or municipal functions such as fire protection within 1/2 mile of the nonmetallic mine site or processing facility. Adverse effects include but are not limited to a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(e) The Operator shall undertake all measures necessary to control 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.

(g) In the event that the mine site contains areas adjacent to 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 nonmetallic mining operation or otherwise causing contamination of surface water and groundwater at the nonmetallic mining operation.

(9) 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 use as landfill material or dispose of onsite, any waste material that contains a toxic amount of a hazardous chemical or a toxic residual.

(c) The Operator shall have a plan for responding to spills of any hazardous materials on the nonmetallic mine site or processing facility. . The operator shall provide a copy of the plan with a list of all hazardous materials and substances to the Fairchild Fire District and Jackson County Emergency Management. Upon request, the Operator shall provide an opportunity for periodic site visits by emergency services and law enforcement personnel within 24 hours

(10) Monitoring and Testing

Any monitoring and testing should be performed by an independent licensed third-party, using a certified laboratory, at the Operator's expense, and under a monitoring plan approved by the Town.

(11) Additional Standards

The Town Board may, at any time, impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health, safety and welfare are not being or will not be adequately protected without the imposition of additional measures.

Section 10.08. Reporting, Annual Report, Inspection 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 or operators. The Operator shall provide notice to the Town of such actions within 15 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 30 days of receipt of the results by the Operator.

(2) Annual Report.

(a) No later than October 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent mining sites and processing facilities for which the Operator has a license in the Town of Cleveland. The reporting period shall be from the date of the issuance of the first Operator's license to August 31, and thereafter from September 1 to August 31.

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

1. An identification of the Operator and location of the nonmetallic mine site or processing facility.
2. A map or drawing accurately showing the area of excavation, the unclaimed area and the reclaimed area including a calculation of the number of acres for each type.

3. A description of activities, including sand extraction and waste material production and operations on the nonmetallic mine site or processing facility for the previous calendar year including the cubic yards each of material extracted, sand processed, and waste material produced.
4. A description of activities and operations on the nonmetallic mine site, including sand extraction and waste material production or processing facility anticipated for the following calendar year including the cubic yards each of material to be extracted, sand to be processed, and waste material to be produced.
5. 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 include all groundwater, surface water and other monitoring results, as well as a copy of all annual reports submitted to all other agencies.
6. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

(3) Annual Inspection.

The Town Board or other authorized representative who has the authority will perform an annual inspection in order to inspect all operations to ensure compliance with the minimum standards under this Ordinance upon showing proper identification, and upon 30 days notice.

(4) 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 October 1 of the year in which the license will expire. The application shall be accompanied by payment of a fee in an amount in accordance with the reimbursement provisions set forth in Section 10.05(2).
- (b) The written request for renewal shall incorporate by reference the annual report from the previous calendar years in accordance with the provisions of sub. (1).
- (c) The Town Clerk shall review the renewal application within 60 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 utilize a Retained Expert to inspect the nonmetallic mine site or processing facility unless the site is reported as being inactive during the past year, in which case a member of the Town Board 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 par. (g).
- (e) If the Town Board determines that additional expertise is required, the Town Board shall authorize hiring a Retained Expert 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 and any administrative staff. The additional fee shall be paid before additional review is undertaken.

(f) Once the applicant has submitted any additional information and has paid the 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:

1. There have been no material violations of the Ordinance or the license which have not been appropriately remedied, and
2. The Operator has not received multiple or recurring citations or orders for violations of the Operator's license or this Ordinance.
3. 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 under Section 10.09(3).

Section 10.09. Inspection, Enforcement, Procedures and Penalties

(1) Inspection.

(a) In addition to an annual inspection pursuant to Section 10.08 (3), the Town Board or other authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a nonmetallic mine site or processing facility in the Town of Cleveland in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance upon showing proper identification, and upon 10 days 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 sub (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 applicable 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, or failure to report violations of local, state or federal permit conditions, preventive limits, enforcement standards, laws or regulations.

(d) Failure to timely file the annual operational report under Section 10.08.

(e) Failure to comply with any conditions of approving the application, or any agreements entered into as a condition of approving the application.

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

(g) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 10.10 or other order issued by the Town.

(3) Hearings.

(a) Any person affected by a notice and order issued in connection with the enforcement of this Ordinance under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or upon 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 sub. (4), or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Chapter have been complied with, and the petitioner shall be notified within ten days in writing of such findings.

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

(4) Remedies.

The Town Board may take appropriate action or proceedings against any nonmetallic mining operation in violation of this Chapter, including the following:

(a) Issue a stop work order.

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

remedy a situation.

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

(d) Suspend or revoke the Operator's license under sub. (5) in the event there are repeated exceedance of the standards incorporated into an Operator's License or Planned Mining Operation Agreement.

(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 sub (2). If an operator's license is revoked, all rights there under shall terminate. The only mining operations which may be engaged in on any given mining site after license revocation shall be reclamation pursuant to the requirement of the licensee's NR 135 permit.

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less that \$1000 per violation nor more than \$5000 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 Chapter shall pay court costs and attorney's 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 10.10. Financial Assurance

(1) Financial assurance

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

(a) Road repair. An amount necessary for the repair and maintenance of Town roads used for truck traffic transporting materials to or from the nonmetallic mine site or processing facility in accordance with the provisions of the road agreement.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1 mile of the mine site or such other area shown to be impacted by the operator's operations.

(c) Cost and expenses for local emergency service providers, safety and security providers, air quality testing, erosion/storm water control, water quality and quantity testing, structure(s)/building(s) removal, and insurance and bond.

- (d) Assure timely royalty payments, if any.
- (e) Administrative costs and expenses, including assessor's fees and attorney fees incurred by the Town related to the mine, processing and rail line operation in the Town in amounts in excess of one hundred dollars (\$100) per month.
- (f) The Town Board, its officers, employees and agents, shall be indemnified, held harmless and defended by the Operator in any civil action related to the Application, License, and Development Agreement that may be brought by third persons.
- (g) The form of financial assurance made to the Town of Cleveland shall be that form agreed to by the Town Board and may include escrow accounts, irrevocable letters of credit, insurance and bonding or other measures agreed upon by the Town Board.
- (h) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.
- (i) The operator shall provide to the Town proof that it has provided the financial assurance for reclamation required under Wisconsin law.

Section 10.11. Damages to Private Water Supplies

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

- (a) A maximum contaminant level, preventative action limit or enforcement standard is exceeded in a private water supply well on the owner's property.
- (b) A substantial adverse impact on the quantity of water from a private well on the owner's property occurs, including but not limited to the inability of any such well to provide water on a continuous basis.
- (c) A lowering of surface waters which serve as a source of water for personal, agricultural, recreational or municipal functions on the owner's property to levels below base flow levels for more than 5 days.

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

(3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 10.10 to provide an adequate interim water supply. The Town shall also use funds under Section 10.10 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 sub (4).

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

(5) The Town shall in consultation with the property owner review the report or plan and approve or deny such plan. If the Town determines that the mine operator was not the cause of damage to the private water supply, the operator may elect to be reimbursed by the property owner for the costs of supplying water during a period not exceeding one year.

(6) A property owner beyond 1 mile of the mine site may apply to the Town for use of funds under Section 10.10(b) to remedy damages to a private water supply identified in sub (1), provided that the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine. If the Town determines that the damage was caused by the mine, the property owner can utilize the remedies in subs (2) to (4).

Section 10.12. Developers Agreement

While the Town Board and Operator are in agreed and continual negotiations to craft a Developer's Agreement, no decision will need to be made on the granting or denying of requested Licenses. All provisions of this Ordinance, including the license term, but excluding Sections 10.05, 10.06, 10.08, and 10.13 may be modified by agreement between the Town and the Operator if the Town Board determines that all of the following conditions are met:

(1) The intent and minimum conditions of this Ordinance can be achieved through the use of alternative measures. Hours of operation do not exceed 16 hours per day.

(2) The agreement provides for the protection of the public at least equal to those protections found under this Ordinance, including remedies to damages to private water supply and property value assurances for nearby landowners.

(3) The public health, safety, and welfare will not be adversely affected thereby.

10.13 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) The provisions of this Ordinance shall be considered the minimum requirements for the protection of the public health, safety, and general welfare of the Town of Cleveland and shall be liberally construed in

favor of the Town of Cleveland and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Cleveland.

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

Section 10.14. 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 _____, 2014.
TOWN OF CLEVELAND

_____, Town Board Chairperson

_____, Supervisor

_____, Supervisor

Attested to as of _____ 2014.

_____, **Town Clerk**