

THE TOWN OF HOWARD
CHAPTER 17
NONMETALLIC MINE OPERATOR'S LICENSES

Section 17.01. Finding, Purpose and Authority

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

(2) Purpose. The purpose of this Chapter is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining operators in order to protect public health and safety, to preserve the scenic beauty of the Town's landscapes and environment, to protect the public from damage to both the quantity and quality of ground and surface waters, to minimize or prevent adverse impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Howard.

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

Section 17.02. Applicability and Scope

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

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

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

(b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the

excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.

(c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(d) Excavations for building construction purposes conducted on the building site.

(e) Nonmetallic mining at nonmetallic mining sites where less than 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.

(g) Non-metallic sand and gravel mines in operation on and prior to the 9th Day of February 2010 shall not be required to register or to apply for a license under this ordinance, as long as said mine operates under the original reclamation plan approved by the Chippewa County LCD and the reclamation plan is not modified in any way. If the reclamation plan is modified, the mine is considered a new operation and is subject to the licensing requirements of this ordinance. (3/6/12)

Section 17.03. Definitions

(1) "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.

(2) "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, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

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

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

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

(f) Disposal of waste materials.

(g) Reclamation of the extraction site.

(3) "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.

(4) A "mine site" or "site" means land from which mineral aggregates or nonmetallic minerals will be extracted for sale or use by the operator, including all land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing or screening facilities, dry –processing facilities, facilities for the loading and unloading of sand to and from trucks, private roads or haulage ways associated with nonmetallic mining operation; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or operator. (Amended 4/2014)

(5) "Landowner" means the person who has title to land in fee simple or who holds a land contract for the land.

(6) "Adjoining landowner" means any property within 1/2 mile of the proposed mine site regardless of whether there is a residence or structure on the property.

(7) "Town" means the Town of Howard.

(8) "Town Board", means the Town Board of the Town of Howard.

(9) "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.

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

Section 17.04. License Required

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

(2) License Term

(a) Except for the first year of operation under this Chapter, an operator's license shall be granted for a period of three years commencing on July 1 and ending on June 30 of the

following calendar year. The initial three year period shall begin on the first July 1 following the date of the issuance of the operator's license. (Amended 4/2014)

(b) An operator's license may be renewed as set forth in Section 17.08, 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 with the permission of the town board, provided that the new operator provides financial assurances and other information as may be required by the town, county, or state, and provided that the operational plan as submitted at the time of granting the license being transferred remains unchanged. (Amended 4/2014)

(5) License Revocation. An operator's license may be revoked under the procedures in Section 17.09.

(6) Registration License. Nonmetallic mining operations that meet the following criteria may apply for a registration license under §17.15 in lieu of an operator's license:

(a) The nonmetallic mining operation where less than 5 acres of total affected acreage occurs over the life of the mine or the processing facility.

(b) The nonmetallic mining operation does not involve blasting.

(c) The nonmetallic mining operation does not involve processing of materials from off-site.

(d) The nonmetallic mining operation does not involve mining at a depth below the point that is 5 feet above the groundwater table.

(3/6/12)

Section 17.05. Procedures For Applying For A License To Mine

(1) Application Form. The Application Form for a license to mine in the Town of Howard 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 17.06 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town of Howard Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of Howard." 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 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 an engineering firm or other qualified person with appropriate expertise ("retained expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.

(c) **Additional fees.** If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of an engineering firm or other qualified person with appropriate expertise to advise the Town and shall give written notice to the applicant of the estimated additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The estimated additional fee shall be paid before the additional review is undertaken. If the amount of the final administrative fee exceeds the estimated fee, the applicant shall pay the amount before review is undertaken; if the final administrative fee is less than the estimated amount, the overpayment shall be refunded to the applicant. (Amended 4/2014)

(d) 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 Chapter.

(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. The Town Board shall set a date for a public hearing and give public notice at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all adjoining 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. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall review the retained expert's report as well as public comments made at the public hearing. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Chapter. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 17.09(3).

Section 17.06. License Application

All applicants for a mining license shall submit the following information:

(1) Ownership Information.

(a) The name, address, phone number(s), and e-mail address of the operator of the nonmetallic mining operation.

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

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

(2) Site Information and Maps.

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

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

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

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

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

(f) The location and name of all surface waters, including lakes, private or public ponds, streams (including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns and other water features on the site and within 1/2 mile of the site. If the gradient of groundwater flow is in the direction of a stream, the applicant must supply data establishing the base-line flow of the stream at the time of license application. (Amended 4/2014)

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

(h) A map identifying the location of all other non-contiguous sites within the Town of Howard and adjacent towns, if any, that will contribute material to the facility for which the applicant seeks a license. (Amended 4/2014)

(3) Operation Plan

- (a) Dates of the planned commencement and cessation of the operation.
- (b) Description of mining methods, machinery and equipment to be used for extraction and processing of the extracted material, and the sequence of operations.
- (c) Estimated volume of material to be extracted over the life of the mine and for the next calendar year.
- (d) 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 including methods used for infiltration and control of run-off.
- (g) A listing of any hazardous materials, including fuel supplies that will be stored on site and a description of measures to be used for securing and storing these materials.
- (h) A listing of all chemicals used in the manufacturing or processing operations or in controlling dust. The operator shall select products that limit the potential for groundwater or surface water pollution, as may be identified on recognized product lists available from Wisconsin DNR, EPA, or other agencies. (Amended 4/2014)
- (i) Contiguous properties. For contiguous properties under common ownership or control of the applicant owner or operator, a timetable and plan indicating the anticipated nonmetallic mining operation expected to be undertaken at such properties. (amended 9/2014)

(4) Information Demonstrating Compliance with Minimum Standards.

- (a) The operator shall provide the information necessary to demonstrate that the mining operation will comply with the minimum standards in Section 17.07.
- (b) For mining operations commencing after the effective date of this Chapter, the operator shall also provide information establishing baseline conditions at the site before mining operations commence, including the groundwater elevation across the site, groundwater quality at the site for lead, arsenic and any other toxic metal that may reasonably be believed to be present in the area or in the type of deposit from which the extraction will be made, and the base flow of surface water with 1/2 mile of the site.

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

Section 17.07. 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 fencing or other appropriate measures.

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

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

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

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

(f) A minimum setback of 800 feet from the edge of the property boundary on which the mining operation or industrial frac-sand facility is located to a residence is required. However, the setback does not apply (i) to a residence that is occupied by someone who has sold or leased their land to the applicant on which the mining facility will be located nor (ii) to a residence that is occupied by someone who has leased lands for a mining operation, though not covered by the license application under current review. (Amended 4/2014)

(2) Standards Regarding Off-Site Impacts.

(a) The operator shall undertake all measures necessary for the control of surface water runoff from nonmetallic mining operations in order to prevent pollution and erosion of sediment onto neighboring properties, surface water and groundwater, and shall also comply with the standards for erosion control under NR 216 and NR 151 as applicable.

(b) In the event that the mine site 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 prevent surface water runoff from those areas from entering mining operations. (Amended 4/2014)

(c) The operator shall provide a 15 foot setback from the outside edge of a roadside ditch and, where necessary, along the property lines of adjoining landowners. This 15 ft. area shall be vegetated to minimize sediment laden runoff from entering the ditch or onto neighboring land. No part of any berm shall be located within this 15 foot area. The setback area may be used by equipment for repair or maintenance of the berm or to remove erosive soils deposited in the setback area. This 15 ft. setback is in addition to whatever buffer is set by the County in its conditional use permit or reclamation plan. (Amended 4/2014)

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

(e) The operator shall limit normal hours of operations to 12 hours a day Monday through Friday during daylight hours and not later than 6:00 pm to minimize off-site impacts to residents. The operator may submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary for the mining operation and it would be consistent with public, health safety and welfare. (Amended 4/2014)

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

(g) The operator shall limit night lighting on site, to that which is minimally necessary for security. Every effort consistent with the legal requirements for safety shall be made to minimize illumination of the night sky and neighboring properties. At a minimum such measures shall include the following:

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

(h) The operator shall control off-site noise levels to the maximum extent practicable. The noise levels at the boundaries of the mining or processing site shall not exceed 60dB. The use and regulation of compression release engine brakes, commonly known as jake-brakes is at the discretion of the Town Board, where posted.

(i) Air monitors.

- 1) The operator shall utilize all relevant dust control measures specified in Wis. Admin. Code § NR 415.075.

- 2) If an applicant is applying for an operator's license for a mining operation that includes a frac-sand processing plant, the operator shall be required to monitor the ambient level of airborne particulate matter of 2.5 microns in size (PM_{2.5}) and Total Suspended Particulates (TSP) as measured by the method described in Appendices L and B, respectively, of 40 CFR part 50 (2011) or a method approved in writing by the Town. 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.
- 3) If the air monitors show an exceedance of 35 micrograms per cubic meter of PM_{2.5} in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize PM_{2.5} emissions.
- 4) If the air monitors show an exceedance of 150 micrograms per cubic meter of TSP in any 24 hour period, the operator shall evaluate and implement additional best management practices to minimize TSP.
- 5) The operator shall compile a quarterly summary of monitoring results report within 10 days of the end of each month that shall be available to the Town Board. (3/6/12)

(j) In order to minimize the emission of dust at a processing and/or transloading facility, stockpiling of unprocessed material, waste or finished product is prohibited and must be fully enclosed in a structure. (Amended 5/2017)

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Sentinel wells (i.e. a groundwater monitoring network) on the extraction site shall be placed to monitor depth to groundwater table, groundwater gradient, and groundwater quality. Base-line data prior to the onset of mining must be included in the application material. Quarterly samples shall be taken of water quality for chemicals used in on-site mining operations, as well as for lead, arsenic, iron, iron bacteria and turbidity, and for nitrates and other contaminants associated with any activity other than mining that continues to be conducted on the property on which the mine site is located or on lands adjacent to the mining operation. An annual report of the analytical results shall be provided to the Town. All private wells within ¼ mile of the mine in the down-gradient direction of the groundwater flow shall be tested for these same contaminants every 3rd year of operation. If a sentinel well shows some contamination of groundwater supply that may be due to the mining operation, and no private wells exist ¼ mile down gradient of the sentinel well, then private wells shall be sampled within ½ mile down gradient of the sentinel well. A private well or wells up to ½ mile in any direction

from the mine site shall be sampled at any time the Town requests a sampling, with the results of the sampling provided to the Town and well-owner(s). (Amended 4/2014)

(ii) Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code Ch. NR 140.

(b) Impacts to Groundwater Quantity.

(i) Mining operations shall not extract materials at a depth below the point that is 5 feet above the groundwater table.

(ii) Mining operations shall not cause a significant reduction in the quantity of groundwater available for reasonable use by current users within 1/2 mile of the mine site. A significant reduction is a drop in the water table that results in a substantial adverse impact on a private well including but not limited to the inability of a well to provide water on a continuous basis.

(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 of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

(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 or municipal functions such as fire protection within 1/2 mile of the mine site. 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.

(4) 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 in toxic amounts, or residuals declared to be hazardous by a government agency in toxic amounts.

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

(5) Control of Waste Material 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. (Amended 4/2014)

(6) Special Exceptions.

(a) The operator can request a special exception from the minimum standards of this Section if it can demonstrate that the intent of this Chapter can be achieved through by the use of alternative measures and that the public health, safety and welfare will not be adversely affected thereby.

(b) The 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 17.08. Annual Report and License Renewal

(1) Annual Report.

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

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

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

(ii) A map or drawing accurately showing the area of excavation, the unclaimed area and any the reclaimed area 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.

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

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

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

(2) License Renewal.

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

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

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

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

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

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

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

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

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

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

Section 17.09. Inspection, Enforcement, Procedures and Penalties

(1) Inspection In addition to an annual inspection pursuant to Section 17.08(2), the Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town of Howard in order to safeguard the health and

safety of the public and determine compliance with the minimum standards under this Chapter upon showing proper identification, and upon reasonable notice.

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

- (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 Chapter.
- (c) Making an incorrect or false statement in the information and documentation submitted during the licensing process or during inspection of the operation by the Town or its duly appointed representative.
- (d) Failure to timely file the annual operational report under Section 17.08.
- (e) Failure to take appropriate action in response to a notice of violation, citation, request for additional financial assurance under Section 17.10 or other order issued by the Town.

(3) Hearings

(a) Any person affected by a notice and order issued in connection with the enforcement of this Chapter under sub. (4), or upon denial of an application for a license or license renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk, a written petition requesting the hearing and setting forth his name, address, telephone number and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty days of the date the notice and order are served or 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 any appropriate action or proceeding against any person in violation of this Chapter, including the following:

- (a) Issue a stop work order.
 - (b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation and specifies the date on which remediation must be completed. (Amended 4/2014)
 - (c) Issue a citation in accord with the Town of Howard citation ordinance.
 - d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub (6) and injunctive relief.
 - (e) Suspend or revoke the operator's license under sub (5).
- (5) License Suspension or Revocation. After giving notice and a hearing, the Town Board may be suspend or revoke an operator's license for a violation under sub (1).
- (1) An operator's license may be revoked, if the Town finds that mining operations have been abandoned. (Amended 4/2014)

(a) An operation may be considered "abandoned" if no significant mining operation has occurred for more than 60 consecutive work days in a two year period of operation.

(b) Prior to a finding of abandonment, the Town board must provide notice to the operator of the pending revocation of the operator's license and offer the operator the opportunity to request a hearing on the matter before the Town. The operator shall have this opportunity only if, within 30 days of the Town Clerk's mailing of the registered notice of intent to revoke, the operator provides a written request for the hearing and includes 1) an explanation for the cessation of the mining operation and 2) a plan and a date for a restarting of the operation. If the Town receives no such request within the 30 day period, the Town shall notify the applicant that the operator's license has been revoked.

(c) Upon receipt of a request for a hearing with the requisite documents, a hearing shall be scheduled. After the hearing, the procedures stated in Sec.17.09 (3) (b) and (c) shall apply.

(d) A restart of the operation after a finding of abandonment is a violation of this chapter and subject to the penalties as provided in this Chapter.

(e) The Town shall inform the County Land Conservation Department of a finding of abandonment and request that the County order reclamation to begin

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5000 per violation

and/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 reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

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

Section 17.10. Financial Assurance

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

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

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 1/2 mile 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 Howard shall be that form agreed to by the Town Board and may include performance bonds, irrevocable letters of credit or other measures agreed upon by the Town Board.

(3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the operator of the additional amount needed and the basis for the request. The operator shall have 30 days to provide the increased amount.

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

Section 17.11. Damages to Private Water Supply

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

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

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

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

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

(3) Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 17.10 to provide an adequate interim water supply. The Town shall also use funds under Section 17.10 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 to present a plan for a permanent alternative water supply to be paid by the operator.

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

(6) A property owner beyond 1/2 mile of the mine site may apply to the Town for use of funds under Section 17.10 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 17.12. Severability, Interpretation, and Abrogation

(1) Severability.

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

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

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

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

Section 17.13. Effective Date

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

Chapter 17.14 Mining Agreement (Amended 4/2014)

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

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

(3) Application for a Mining Agreement

(a) The application requirements, approval requirements and procedures in Section 17.05 apply to an application for approval of a Mining Agreement, except that the standard for granting the application is set forth in (4).

(b) The application shall include all of the information and other materials required in Section 17.06.

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

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

(4) Decision by the Town Board.

- (a) The Town Board shall review the application in accordance with the procedures for review of a mining operator's license application.
- (a) The Town Board may review the application, any retained experts' reports, and public comments made and information provided at the public hearing, and any other information the Town Board deems appropriate. The Town Board may, in its sole discretion, approve the Mining Agreement in the exercise of its police powers.
- (b) If the Mining Agreement is approved, all standards and regulations in this Chapter that are not expressly modified in such approval shall apply to Mining Agreement.
- (c) The Town Board may condition its approval on the Operator entering into such agreements and providing such financial assurance as the Town Board deems appropriate to promote the public health, safety and general welfare.

Section 17.15 Registration License.

(1) For nonmetallic operations that qualify for a registration license under Section 17.04(6), the Town Board shall grant a registration license if the operator submits the following information to the Town Board:

- (a) A certification from the operator that it meets the requirements in Section 17.04(6)
 - (b) Ownership information under Section 17.06(1)
 - (c) A copy of any reclamation plans filed with the County and any permits issued by other federal, state or local agencies for the nonmetallic mining operation.
 - (d) A certification that it will use best management practices to control noise, dust, light, surface water runoff and other off-site impacts from the operations.
- (2) Registration licenses shall be subject to renewal every five years and subject to the inspection, enforcement and provisions of Section 17.09.
- (3) Unless specifically enumerated above, operators seeking registration licenses shall not be required to comply with the provisions in Sections 17.05 to 17.08 or the provisions in 17.10 and 17.11.