

THE TOWN OF WARREN
NONMETALLIC MINE OPERATOR'S LICENSE
ORDINANCE

ORDINANCE NO. 20/2-07-16

Section 1. Finding, Purpose and Authority

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

(2) Purpose. The purpose of this Ordinance is to provide minimum standards for all nonmetallic mining operations in the Town, and to require licenses for nonmetallic mining 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 Warren.

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

Section 2. Applicability and Scope

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

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

- (a) Excavations or grading by a person solely for domestic or farm use at that person's residence or farm.
- (b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries of the highway, railroad or other transportation facility.
- (c) Grading conducted for preparing a construction site (except a nonmetallic mining site) or restoring land following a flood or natural disaster.
- (d) Excavations for building construction purposes conducted on the building site.
- (e) New nonmetallic mining sites of less than ten acres and existing nonmetallic mining sites expansion by less than ten additional acres. For purposes of this exemption, "existing nonmetallic mining site" means a sand or gravel mine in operation and with a reclamation permit approved by St. Croix County.
- (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) Nonmetallic sand and gravel mines in operation prior to the enactment of this Ordinance 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 County, and the reclamation plan is not modified in any way. If the reclamation plan is modified, to expand by 10 acres or more from the approved plan in effect on July 1, 2012, the mine is considered a new operation and is subject to the licensing requirements of this ordinance.

Section 3. 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, drying, dewatering, or blending of the mineral aggregates or nonmetallic minerals obtained by extraction from the mining site or with materials transferred from off-site.

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

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

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

(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 and/or any land on which is or will be located any structures, equipment, storage facilities, stockpiles, washing, drying, dewatering, transfer, transload or screening facilities, private roads, rail spurs or haulage ways associated with nonmetallic mining operation; and all contiguous lands to the nonmetallic mining operation under common ownership or control of the owner or Operator.

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

(6) "Town" means the Town of Warren, in St. Croix County, Wisconsin.

(7) "Town Board", means the Town Board of the Town of Warren, in St. Croix County, Wisconsin.

(8) "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.

(9) "Operator's license" or "license" means the license required of mining Operators in this Ordinance to undertake nonmetallic mining in the Town of Warren.

Section 4. License Required

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

(2) License Term

(a) An Operator's license shall be granted for a period of two (2) years commencing on the date the license is issued and ending on the second (2nd) anniversary of the issuance of the license.

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

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

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

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

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

Section 5. Procedures For Applying For A License To Mine

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

(2) Application Submittal. The applicant shall submit five (5) copies of the Application Form and all required documentation required under Section 6 to the Town Clerk accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Ordinance in amounts of \$2,500 and \$500, respectively. The fees shall be made payable to "Treasurer, Town of Warren." The Application Form shall be signed by the Operator and by the landowner, provided the landowner is a person other than the Operator.

(3) Initial Review by the Town Board.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for consideration under sub. (4).

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

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

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

(4) Decision by the Town Board.

(a) Notice. Once the application is complete and any report by a retained expert has been completed, the Town Clerk shall place the application on the agenda for the next regular meeting of the Town Board. If a special meeting is

warranted, the applicant shall pay the additional fees incurred for the special meeting. In the discretion of the Town Board, the Town Board may hold a public hearing regarding the application.

(b) **Town Board Decision.** The Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the Operator's license. If a special meeting is warranted, the applicant shall pay the additional fees incurred for the special meeting. The Town Board shall grant the license if it determines that the operation of the mine will be consistent with the minimum standards and the purposes of this Ordinance. If the Town Board denies the license, the applicant may request a hearing under the provisions of Section 9(3).

Section 6. License Application

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

(1) **Ownership Information.**

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

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

(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.

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

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

(a) A certified survey map(s), survey or other reasonably accurate and complete map 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) The location within the site of all existing buildings and other structures, equipment, stockpiles, storage and parking areas.

(d) A topographic map or maps of the mine site extending 3 and 1/2 miles 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.

(e) A map on which the all residential, agricultural and municipal wells within 3 and 1/2 miles 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 3 and 1/2 miles of the site.

(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) For manufacturing, drying, transfer, transload or processing facilities within the Town, a map identifying the location of all other non-contiguous sites within the Town of Warren and any other municipality, if any, that will contribute extracted material to the same manufacturing, drying, transfer, transload or processing facility to which the site for which the applicant seeks a license.

Notwithstanding anything to contrary in this Section 6(2), if the Operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the Operator shall state the same in its application and may omit the items described in Sections 6(2)(d)-(g) in its initial application; provided, however, at the request of the Town Board, the Operator shall supplement its initial application with such information.

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

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

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

(f) A water budget, including an estimate of the amount of daily water use, water sources, and methods for disposing of water 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 and approximate quantities used in the manufacturing or processing operations or in controlling dust. Note: If the Operator desires to change or add chemicals, the Town Board must be notified in advance of any such change or addition.

(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 7.

(b) For mining operations commencing after the effective date of this Ordinance, 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 3 and 1/2 miles of the site.

Notwithstanding anything to contrary in this Section 6(4), if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and may omit the items described in Sections 6(4)(b) in its initial application; provided, however, at the request of the Town Board, the operator shall supplement its initial application with such information.

(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 7. Minimum Standards of Operation

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

(1) **General Standards.**

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

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

(c) No blasting or other violent methods of dislocation shall occur without special permission by Town Board, or the Operator shall have obtained a blasting permit from the Town pursuant to the Town's Blasting Ordinance if one has been enacted.

(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 minimize backup alarm sounds as much as possible, and use broadband sound (known as "white noise") to the extent permitted under federal and state regulations

(f) No jake braking of trucks entering and leaving the mine site. Operator shall inform all truck drivers and any independent contractors that they must comply with the no jake braking rule and all other applicable traffic codes. If a trucker disregards this notice, Operator shall take steps to correct the action or stop using any such trucking company that refuses to comply.

(g) The Operator shall meet at least annually with the Town at a regular April Town Board meeting (or a special Town Board meeting at the Town Board's discretion) regarding operations and possible issues.

(h) The Operator shall contact the Town Chairperson as soon as possible and no later than within 2 hours, in the event of hazardous chemical or waste spills, leaks or contamination of any kind or in the event of a release of any chemical, dust or particles above levels permitted by applicable regulations.

(i) 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.

(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 control surface water runoff from those areas from entering mining operations or otherwise causing contamination of surface water and groundwater.

(c) The Operator shall provide a buffer area of a minimum of 50 feet along bordering property lines and public roadways.

(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. Prior to construction, the Town shall be consulted on the analysis and configuration of berm construction and placement.

(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 or as part of a Mining Agreement, if it can demonstrate that additional hours are reasonably necessary for the mining operation and it would be consistent with public, health safety and welfare.

(f) The Operator shall obtain a current bus schedule from all school districts which operate regular bus runs on any roads used by the trucks. 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 and, wherever possible, shall be shielded from illuminating off-site areas. Every effort consistent with legal requirements for aerial safety shall be made to minimize illumination of the night sky. Upon written complaint of light pollution made to the Town Board, the Town shall notify Operator, which shall take steps to mitigate the light pollution by redirecting the lighting and taking other reasonable steps to address the complaint.

(h) The Operator shall utilize all relevant dust control measures

specified in Wis. Admin. Code § NR 415.075.

(i) Operator must meet the air quality standard of 3 micrograms per cubic meter of respirable crystalline silica (as established by the California OEHHA) at the boundary of the mine. Operator must meet the EPA particle size standards PM 10 and, PM 2.5 at the boundary of the mine site. At Operator's Expense, site must have a minimum of 4 automatic and continuous monitors, installed and properly functioning, strategically located on the borders of the mine site, with monthly readings from the monitors collected by an independent service. Data from those readings must be given to the Town and posted on a web site designated by the Town. The Town may, at its discretion, order additional collections of readings by the designated independent source at any time it deems it necessary to protect the health and safety of the public.

(j) The Operator shall control off-site noise levels to the maximum extent practicable (for example but not limited to "jake" braking).

(k) To the greatest extent reasonably possible, the Operator will direct trucks carrying material to or from the mine site to travel on roads other than Town roads (i.e., United States Highways and County Roads). The Operator will direct any employees or contractors providing services to the Operator to comply with this provision. In the event that the Operator believes that any town road will regularly be used to haul materials to or from the mine site, the Operator will notify the Town and comply with Section 10 of this Ordinance.

(l) The Operator will comply, and cause its contractors and employees to comply, with the seasonal spring special weight restriction imposed upon Town roads for the approximate six (6) week period beginning in March.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Mining operations shall have at least one monitoring well for every 10-acre sector of the mine site, and the Operator shall take quarterly samples 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.

(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 3 and 1/2 miles 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. See Section 11 of this Ordinance for further details.

(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 3 and 1/2 miles of the mine site, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining 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. 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) Storm Water Management. Operator shall repair any damage to, and remove sediment from any private property, or town roads, ditches and other drainage ways when Operator is found responsible by the Town for such sediment or damage caused by runoff from the mine site for any reason, including but not limited to heavy rains and/or snowmelt runoff.

Notwithstanding anything to contrary in this Section 7(3), if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and shall not be obligated to comply with Section 7(3)(a)(i) of this Ordinance.

(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 on site or in the Town of Warren, except in accordance with applicable state and federal law and with prior approval of the Town Board.

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

(5) Special Exceptions.

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

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

Section 8. Annual 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 Warren.

(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 (not applicable if the operator has only conducted drying (without chemicals), transfer or transloading at the mine site).

(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 Ordinance. The report shall also include any groundwater, surface water and other monitoring results, as applicable.

(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 six (6) months prior to the date on which the license will expire. The application shall be accompanied by the payment of both the renewal application fee of \$2,500 and the base administrative fee of \$500 established for the administration of this Ordinance.

(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 or their designated person may be assigned to inspect the site. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under par (g).

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

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

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

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

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

(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 9. Inspection, Enforcement, Procedures and Penalties

(1) Inspection. The Town Board or other authorized representative of the Town, may make inspections to determine the condition of nonmetallic mining sites in the Town in order to safeguard the health and safety of the public and determine compliance with the minimum standards under this Ordinance. The Town Board or their authorized representative may enter the mine site during regular hours of operation for inspection and, if necessary, to investigate any complaints. The Town official shall notify the Operator's designated contact person by phone prior to entering the site, and will report his presence to the onsite supervisor upon entering the site upon showing proper identification, and upon reasonable notice.

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

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

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

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

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

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

(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 (30) days of the date the notice and order are served or upon thirty (30) days upon

denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.

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

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

(4) Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

(a) Issue a stop work order.

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

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

(d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under 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 suspend or revoke an Operator's license for a violation under sub (1).

(6) Penalties.

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less that \$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 Ordinance 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 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. Upon the agreement of the Town Board, the financial assurance may be in the form of a Road Maintenance Escrow Account.

(b) Water Supply. An amount necessary to provide an alternative water supply to potentially affected residences or agricultural operations within 3 and 1/2 miles of the site or such other area shown to be impacted by the Operator's operations.

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

(3) If at any time after a license is issued, the Town determines that the amount of financial assurance must be increased to meet specific road repair or water supply needs, or the amount available has been utilized, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall have 30 days to provide the increased amount.

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

(5) Notwithstanding anything to contrary in this Section 10, if the operator will only be conducting drying (without chemicals), transfer or transloading at the mine site, the operator shall state the same in its application and shall not be obligated to comply with Section 10(1)(b) of this Ordinance; provided, however, in the event that the Town Board determines that 10(1)(b) should apply to a particular Operator as a result of the nature of that Operator's operations, Section 10(1)(b) shall apply.

Section 11. Damages to Private Water Supply

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

(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 or quality 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 10 (if applicable) to provide an adequate interim water supply. If applicable, the Town shall also use funds under Section 10 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue until the Town has approved the report or plan under sub (4).

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

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

(6) A property owner beyond one (1) mile of the mine site may apply to the Town for use of funds under Section 10, if applicable, to remedy damages to a private water supply identified in 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 12. Severability, Interpretation, and Abrogation

(1) Severability.

(a) Should any section, clause, provision or portion of this Ordinance

be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction including all applicable appeals, the remainder of this Ordinance shall remain in full force and effect.

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

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

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

Section 13. Mining Agreement

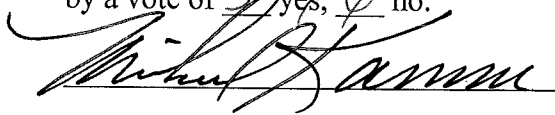
Any of the provisions of this Ordinance, including the license term, may be modified by agreement between the Town and the Operator if the Town Board determines that the agreement provides protections for the public at least equal to those of this Ordinance.

Section 14. Effective Date

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

ADOPTED this 16th day of July, 2012

by a vote of 5 yes, 0 no.



Board Chair

Attest:
Town Clerk

