

THE TOWN OF NORTH BEND
NON-METALLIC MINE OPERATOR'S LICENSES
ORDINANCE NO. 2013-1

The Town Board of the Town of North Bend of Jackson County, Wisconsin, does hereby ordain as follows:

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 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 North Bend.

(3) Authority. - This Chapter is adopted by the powers granted to the Town of North Bend 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 2. Applicability and Scope

(1) This Chapter shall apply to all nonmetallic mining operations and mine sites within the Town of North Bend 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.

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, 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,

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.

(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 North Bend.

(8) "Town Board", means the Town Board of the Town of North Bend.

(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 North Bend.

Section 4. License Required

(1) License Requirement. No person shall operate a nonmetallic mine within the scope of this Chapter in the Town of North Bend 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 one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Chapter, the operator's license will extend from the date of issuance until the first June 30th after 12 months of operations have been completed.

(b) An operator's license 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, if the new operator provides financial assurances as may be required by the Town, county, or state.

(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 non-renewable operator's license not to exceed six months, for mining operations within the scope of this Chapter that were in existence as of the effective date of this Chapter, 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 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 North Bend 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 Chapter in amounts set forth in the Town of North Bend Schedule of Fees and Forfeitures. The fees shall be made payable to "Treasurer, Town of North Bend". The Application Form shall be signed by the operator and by the landowner, provided the landowner is a person other than the operator.

(3) Fees. The initial application shall be accompanied by a fee payment of \$500.00. Renewals shall be subject to a \$500.00 fee.

(4) 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 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) 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.

(5) 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 and place such conditions on the license as it deems to be in the public health, safety and welfare. 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 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.

(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 North Bend and adjacent towns, if any, that will contribute extracted material to the same manufacturing facility to which the site for which the applicant seeks a license will also contribute.

(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.

(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 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 within a 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.

(6) Other Information. Such other information as the Town deems necessary to review the application and make a determination in the public health, safety and general welfare.

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 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.

(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 Wis. Admin Code §§ 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 200 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.

(e) The operator shall limit normal hours of operations to 10 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.

(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 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.

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

(i) The operator shall control off-site noise levels to the maximum extent.

(3) Standards Regarding Groundwater and Surface Water.

(a) Impacts to Groundwater Quality.

(i) Mining operations shall have at least one monitoring well for every 2-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 § 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) 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.

(6) Impacts on Adjoining Landowner's Property Values

(a) For a period five (5) years next following the approval of a nonmetallic mine operation under Wis. Adm. Code Ch. NR 135 Reclamation Plan for the nonmetallic mine site against which a property value guarantee is sought to be imposed, the operator shall provide a property value guarantee as follows. Each eligible Adjoining Landowner owner who wishes to participate shall at the approximate time of commencement of the mining operation in question sign up with the Town Clerk. Each such landowner shall have one (1) year from approval of the Wis. Adm. Code Ch. NR 135 plan to sign up, otherwise they forfeit their rights to do so. This guarantee shall apply only to the owner of land that is adjacent to the mine operation at the commencement of the mine operation and only for land that is adjacent to the mine operation.

(b) An Adjoining Landowner (hereinafter "Owner" in this section) desiring to sell his or her property and exercise the option provided in this property value guaranty shall notify the Operator of their intent no later than the cessation of mining activity under the License and any renewals.

(c) The Owner and the Operator shall agree on an appraiser who is licensed as a real estate appraiser in the State of Wisconsin. The Operator shall pay for the appraisal.

(d) In the event the Owner and Operator are unable to agree on an appraiser each shall select a Wisconsin licensed appraiser at their own respective expense and the average of the two appraisals shall determine the Fair Market Value.

(e) The appraiser(s) selected pursuant to paragraphs C or D above shall provide the Owner and Operator with an appraisal of fair market value of the property assuming the nonmetallic mine of the Operator did not exist.

(f) The owner shall then enter into a listing contract with a duration of six (6) months with a Wisconsin licensed real estate broker. The listing contract shall list the Operator as a potential buyer so that if the Operator purchases the property during the term of said contract no commission shall be due.

(g) Before accepting any offer of less than the Fair Market Value as determined in paragraphs C or D above, the Owner shall give the Operator five (5) business days' notice by fax, email or personal delivery with a copy of the offer to the Operator. If the notice is by fax or email it shall also require confirmed receipt by the Operator. If the Operator objects in writing within two (2) business days, the Owner shall not accept the offer.

(h) If the Owner sells the property for less than the Fair Market Value as determined in paragraphs C or D above, the Operator shall pay the Owner the difference between the selling price and the Fair Market Value. The Operator shall make the payment

within thirty (30) days of the recording of the conveyance of the property.

(i) If the property is not sold within six (6) months of the date of the listing contract, the Operator shall immediately purchase the property for the Fair Market Value as determined in paragraphs C or D above, or at such other appraised value as is agreed upon by and between the Operator and the Property Owner. At the option of the Seller with the approval of the Operator, the listing contract may be extended for an additional six (6) months.

(j) The guaranty shall apply only once for any adjoining property and shall only be available to Adjoining Landowners of record as of and immediately after the date of commencement of mine operations.

(k) Properties shall not qualify for the Guaranty in the event the property owner wishes to sell or otherwise convey the property to a third-party by a transaction which is not considered an arm's length transaction, e.g. a sale or gift to a relative.

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 North Bend.

(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 North Bend 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 9. Inspection, Enforcement, Procedures and Penalties

(1) Inspection. In addition to an annual inspection pursuant to Section 8(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 North Bend 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 8.

(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 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.

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

(d) Suspend or revoke the operator's license under sub (5).

(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 of the minimum standards set forth herein or any condition placed on the license by the Town Board.

(6) Penalties

(a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100.00 per violation nor more than \$5,000.00 per violation, and/or be subject to injunctive relief. Each day a violation exists is a separate violation.

(b) 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 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 North Bend 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 11. Damages to Private Water Supply

(1) A property owner within $\frac{1}{2}$ 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 10 to provide an adequate interim water supply. 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 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 interim water during a period not exceeding one year.

(6) A property owner beyond $\frac{1}{2}$ mile of the mine site may apply to the Town for use of funds under Section 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 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 North Bend and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of North Bend.

(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 13. Effective Date

(1) 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. S 60.80.

Section 14. Mining Agreement

(1) Any provisions of this Chapter, 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 Chapter.

ADOPTED this 10th day of July, 2013

TOWN OF NORTH BEND

Jerry Blaken
Jerry Blaken, Chairman

Richard A. Young
Richard Young, Supervisor

Duane Goodenough
Duane Goodenough, Supervisor

Attest:

Karleen Young
Karleen Young, Clerk

Dated: 7-10-2013

Passed: 7-10-2013

Published: 7-17-2013

TOWN OF NORTH BEND
SUMMARY – NONMETALLIC MINE OPERATOR’S LICENCES
ORDINANCE NO. 2013-1

Please take notice that the Town of North Bend enacted Ordinance No. 2013-1, **Ordinance Requiring Nonmetallic Operator’s License**, on July 10, 2013. The ordinance prohibits the operation of a nonmetallic mine in the Town without first obtaining an operator’s license from the Town. The full text of Ordinance 2013-1 may be obtained at the town clerk’s office at the North Bend Town Hall, N631 North Bend Drive, Melrose, WI. For additional information contact Town Clerk Karleen Young at 608-488-2741.